AGREED RECORD

SUPREME COURT OF THE UNITED

No. [illegible] ORIGINAL

THE STATE OF SOUTH DAKOTA, COMPLAINANT

vs.

THE STATE OF NORTH CAROLINA, CHARLES
AND SIMON ROTHSCHILD

BILL IN EQUITY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 9, ORIGINAL.

THE STATE OF SOUTH DAKOTA, COMPLAINANT,

vs.

THE STATE OF NORTH CAROLINA, CHARLES SALTER, AND SIMON ROTHSCHILDS.

BILL IN EQUITY.

INDEX.

	Original.	Print.
Motion for leave to file bill of complaint	1	1
Order granting leave to file bill of complaint	2	1
Bill of complaint	3	2
Exhibit A—Copy of bond and coupon	17	10
B—An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina Railroad, December 18, 1866	19	11
C—Notice of commissioners appointed under act of March 14, 1879	21	12
Answer of the State of North Carolina	26	15
Exhibit A—An act to adjust and renew a portion of the State debt, March 14, 1879	38	22
Answer of Charles Salter	43	25
Replication to answer of State of North Carolina	49	28
Order to take testimony	50	29
Stipulation to take depositions	51	29
Stipulation to appoint E. S. Battle commissioner	52	30
Deposition taken before I. W. Goodner, commissioner	53	30
Stipulation to take depositions	53	31
Testimony of Charles N. Herreid	55	32

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 9, 1903.

	Original.	Print
Exhibit No. 1—Reproduction of bond and coupons	67	39
Memorandum as to Exhibits Nos. 2 to 10	68	39
Exhibit No. 11—Letter of Simon Schafer to Charles H. Burke, September 10, 1901	69	39
No. 12—Act to require the acceptance and collection of grants, &c., March 11, 1901	71	40
Commissioner's certificate	74	41
Depositions taken before Russell Lucas, commissioner	76	42
Testimony of William Henry Gibson	77	43
Simon Rothschild	94	53
Charles Salter	104	59
Simon Rothschild (recalled)	111	64
Samuel M. Schafer	112	65
Bond and coupon	133	77
Commissioner's certificate	136	78
Stipulation to take depositions	138	79
Depositions taken before Edward S. Battle, commissioner	142	80
Testimony of Miles Osborne Sherrill	143	81
Kemp Plummer Battle	147	83
Charles B. Aycock	165	93
Dr. J. J. Mott	166	94
H. C. Cowles	173	98
Daniel L. Russell	182	102
Fabius H. Busbee	196	110
William H. Worth	202	114
Commissioner's certificate	203	114
Order to take testimony	204	115
Stipulation to appoint commissioner	206	116
Exhibit A—Laws of 1854-'55, chapter 228, Act to incorporate the Western North Carolina R. R. Co.	208	116
B—Laws of 1866-'67, chapter 106, Act to enhance the value of the bonds to be issued for the completion of the Western North Carolina R. R.	229	127
C—Laws of 1879, chapter 138, Act to adjust and renew a portion of the State debt	232	129
D—Laws of 1879, chapter 98, Act to compromise, commute, and settle the State debt	237	131
E—Laws of 1848-'49, chapter 82, Act to incorporate the North Carolina R. R. Co	244	135
F—Laws of 1854-'55, chapter 32, Act for the completion of the North Carolina R. R	271	149
G—Petition addressed to the General Assembly of North Carolina by certain holders of North Carolina bonds issued in aid of the W. N. C. R. R.	274	151
Exhibit A—Schedule of bonds, &c	288	159
B—Bond and coupon	298	164
C—Notice of commissioners	300	165
H—Statement of State treasurer as to certain bonds	306	169
G—Chapter 98, Laws of 1866-'67, Act to authorize the president and directors of the Western North Carolina R. R. Co. to put said road under contract	308	170

	Original.	Print
Depositions taken before A. D. Watts, commissioner	311	172
Notice to take testimony	311	172
Testimony of Charles H. Burke	313	173
Marion Butler	324	179
Commissioner's certificate	331	183
Order fixing day for hearing	333	184
Motion for leave to file stipulation concerning printing of record, &c.	334	184
Stipulation as to printing record	335	184

1 Supreme Court of the United States.

STATE OF SOUTH DAKOTA
against
STATE OF NORTH CAROLINA ET AL.

Comes now the State of South Dakota, by its attorney general, and moves for leave to file the annexed bill of complaint of the State of South Dakota against the State of North Carolina, Charles Salter and Simon Rothschilds and that due process of subpœna issue thereon according to the practice of this court.

Oct. 7, 1901.

JOHN L. PYLE,
Attorney General of South Dakota.
ROBERT W. STEWART,
Solicitor for Plaintiff.

WHEELER H. PECKHAM,
Of Counsel for Complainant.

Endorsed: Supreme Court U. S. October term, 1901. Term No. 11, original. The State of South Dakota *vs.* The State of North Carolina, *et al.* Motion for leave to file bill of complaint. Filed Nov. 11, 1901.

2 Supreme Court of the United States, October Term, 1901.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES Salter, and Simon Rothschilds.
No. 11, Original.

On consideration of the motion for leave to file a bill in equity herein,

It is now here ordered by the court that said motion be, and the same is hereby, granted, and that subpœnas returnable on Monday, March 3d, 1902, be issued and served herein.

Per MR. CHIEF JUSTICE FULLER.

November 18, 1901.

Endorsed: Supreme Court U. S. No. 11, orig'l. October term, 1901. Order Filed Nov. 18 1901.

3 In the Supreme Court of the United States, October Term, 1901. In Equity.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES SALTER, and SIMON ROTHSCHILDS, Defendants. } No. 11, Original.

To the honorable the Supreme Court of the United States:

The State of South Dakota by John L. Pyle the attorney general thereof, brings this, its bill against the State of North Carolina, and Simon Rothschilds, a citizen of the State of New York, and Charles Salter, a citizen of the State of New York.

And thereupon your orator complains and says:

I.

4 That your orator is the holder and owner in its own right, and is in the actual possession of ten certain writings obligatory or bonds with coupons thereto attached, which bonds were issued by the defendant, The State of North Carolina, for the benefit of a certain railroad known by its corporate name as the Western North Carolina Railroad Company, which said bonds the said defendant duly executed and sealed with its seal—all of which ten bonds with the coupons to them attached are now shown unto this court. Each and every one of said bonds is dated July 1, 1867, is of the par or principal of one thousand dollars ($1,000) and has matured and become due on the first day of July, 1897, and has to it attached semi-annual coupons which fell due from January 1, 1869, to July 1, 1897, inclusive, each of said coupons calling for the sum of thirty dollars ($30) being at the rate of six per centum per annum on said principal. A copy of one of said bonds is hereto attached as a part of this bill of complaint, marked Exhibit "A."

II.

That said bonds were issued under and by virtue of an act of the General Assembly of North Carolina entitled "An act to incorporate the Western North Carolina Railroad Company," ratified the 15th day of February, 1855, being chapter 228 of the Acts of 1854–'55, and of an act amendatory thereof, to wit, chapter 106 of the Laws of 1866–'67, ratified the nineteenth day of December, 1866, entitled, "An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina railroad and for other purposes," a copy of which said act of 1866 is hereto attached as a part of this bill of complaint, marked Exhibit "B."

5 III.

That at the time of the passage of the said act of 1866, the defendant, The State of North Carolina, was owner (subject to the statutory

lien or mortgage hereinafter set out and to be designated as the "first mortgage") of thirty thousand shares of stock in the North Carolina Railroad Company of the par value of three million dollars (shares one hundred dollars par) and said act of 1866 directed the State treasurer to mortgage for the security of the bonds held by your orator and of all other bonds of the same issue—that is, issued after the passage of the act of 1866 by authority of the act of 1855 aforesaid—such an amount of the stock owned by the State in the North Carolina Railroad Company as should equal in its par, the principal or par of the State bonds to be issued after the act of 1866 in aid of the Western North Carolina Railroad Company by authority of said act of 1855, which act of 1855 was the incorporation or charter of the Western North Carolina Railroad Company; and said act of 1866 declared that said mortgage should have the force and effect, in law and equity, of registered mortgages without actual registry; and in execution of said act of 1866 the treasurer of the State and the State comptroller certified upon each and all of the said bonds authorized by the act of 1855 and issued after the act of 1866, including the bonds now held and owned by your orator, the following endorsement:

"STATE OF NORTH CAROLINA,
"TREASURY DEPARTMENT,
"RALEIGH, *July* 1, 1867.

"Under the provisions of an act of the General Assembly of North Carolina, entitled 'An act to enhance the value of the bonds
6 to be issued for the completion of the Western North Carolina Railroad Company, and for other purposes,' ratified 19th December, 1866, ten shares of the stock in the North Carolina Railroad Company, originally subscribed for by the State, are hereby mortgaged as collateral security for the payment of this bond.

"Witness the signature of the public treasurer and seal of office, and the counter-signature of the comptroller.

"KEMP P. BATTLE,
"*Public Treasurer.*

"S. W. BURGIN, *Comptroller.*"

IV.

That in 1849 the State of North Carolina incorporated and chartered the North Carolina Railroad Company by an act of its General Assembly, being chapter 82, Acts of 1848–'49, by which act it was provided that the capital stock of said company should be three millions of dollars, of which two millions was to be subscribed by the State and one million by private parties, all of which said subscriptions were duly made and paid into the treasury of the North Carolina Railroad Company; and afterwards, to wit, in 1855, by virtue of the Laws of 1854–'55, chapter 32, section 1, the State subscribed and paid in an additional one million of dollars for an equal amount of said stock, so that the State became and has without interruption continued to be, and is now, the owner of thirty thousand shares

($3,000,000 par) out of forty thousand shares ($4,000,000 par) of stock of said North Carolina Railroad Company; that in order to raise money for the payment of its three-million subscription as aforesaid, it was provided by both of the acts last mentioned that the State should issue its six per cent. bonds for three million dollars, running and to be due in thirty years from their date, and by authority of said acts the bonds of the State were duly issued and sold. And it was further provided by said acts that all of said stocks held and owned by the State (thirty thousand shares—three million dollars par) should be pledged as security for this three millions of bonds, by authority of which statutory lien or mortgage, the holders of said three millions of bonds acquired a first mortgage on all of the State's stock—(thirty thousand shares—three million dollars par)—in said North Carolina Railroad Company. Said bonds are designated in this bill of complaint as first-mortgage bonds.

7

V.

Your orator is advised and believes and so avers that the effect of the legislation and action of the defendant, The State of North Carolina, above recited was to give to the first-mortgage bondholders a lien or pledge or mortgage on all the State stock in the North Carolina Railroad Company, and to give to your orator and the other holders of the bonds which were issued in aid of the Western North Carolina railroad after the passage of the act of 1866 a second mortgage or equitable lien upon such an amount of the said stock as should equal in its par the principal or par of said second-mortgage bonds.

VI.

That the first-mortgage bonds, having been issued from time to time in the years between 1849 and 1853 and running at thirty years, were to fall due between the years of 1879 and 1888. And in 1879 the defendant, The State of North Carolina, through its General Assembly, passed an act entitled "An act to adjust and renew a portion of the State's debt" (Acts of 1879, chapter 138), which act is made a part of this bill as if fully and at large set forth; that under said act of 1879 commissioners were appointed who negotiated with the holders of the first-mortgage bonds, and agreed upon a settlement and compromise with the said bondholders, as by said act authorized and directed. By the terms of the said compromise the public treasurer was directed to issue bonds of the State, dated April 1st, 1879, payable forty years after date, bearing interest at the rate of six per centum per annum; that by section eight of the said act it was provided that these new bonds should in all respects stand in the place of and be entitled to the same securities as were the bonds originally issued, under the Acts of 1848–'49 and 1854–'55, above recited, and it was provided that the new bonds should have the same lien upon the stock of the State in the North Carolina Railroad Company as the bonds originally issued under said act; and it was also provided by said compromise, in substance, that the new bonds were not to be in payment, nor discharge, nor

8

extinguishment, but in renewal and extension of the old bonds and without prejudice to the lien of the said old bonds on the State's stock, which lien, was by said compromise agreement declared to be preserved unimpaired for the security of the new bonds as fully as the old bonds were secured thereby. But notwithstanding this provision written in said compromise agreement, the old bonds, as a matter of fact, and strictly in accordance with said compromise agreement, were surrendered by their holders and delivered up to the defendant, The State of North
9 Carolina, the obligor of said bonds, and were discharged and cancelled in exchange for other bonds of the same obligor, the defendant State, which were in substance and in form, new bonds of the State dated April 1st, 1879, and to become due, April 1st, 1919, and the said new bonds so issued, as your orator is informed and believes and so alleges, did not at all correspond as to their total amount, including their coupons, with the total amount of the old bonds, including coupons that were surrendered and cancelled. And there was no substitution of bonds and coupons for an equal amount of bonds and coupons, but on the contrary there was a surrender and cancellation of the whole issue of old bonds with coupons by their holders, and an acceptance by them of new promises for a different amount.

VII.

The terms of the compromise agreement between the defendant, The State of North Carolina, and the holders of the first mortgage bonds, are set forth in a statement, a copy of which is hereto appended, and made a copy of this bill, marked Exhibit "C."

VIII.

Your orator is advised and believes and so avers that neither your orator nor its assignors, nor any prior holders of bonds herein declared on, nor any other of the holders of the second-mortgage bonds, were parties to or consented to the so-called extension of the first-mortgage bonds. And if the compromise agreement, Exhibit "C" was not a discharge and extinguishment of the first-mortgage bonds, but was simply an extension of the time of their maturity, then such extension, in so far as it affects the holders of the second-
10 mortgage bonds, was and is unlawful and void in that it extends the maturity of the first mortgage without the consent of the second mortgagees who took their mortgage long before such attempted extension, and who by their second mortgage, executed by the act of 1866, acquired the vested right to pay off and discharge the first mortgage, according to its terms as it then existed. And your orator is further advised and believes and so alleges, that if the compromise agreement, Exhibit "C," was not an extension, but was an extinguishment of the first mortgage, then the second mortgage held by your orator and the other holders of the same issue of bonds became and is now a first mortgage on the stock owned by the State in the North Carolina Railroad Company

to an amount of the par of said stock equal to the principal or par of said bonds now outstanding.

IX.

That the defendant, The State of North Carolina, by its act of 1879, chapter 138 (its compromise debt law) offered for the second-mortgage bonds twenty-five per cent. on their principal which was equivalent to only about fifteen per cent. of the amount then due on them; and this was an offer, not to pay the fifteen per cent. in cash, but in a new four per cent. bond of the State. And the defendant State has refused, and does now refuse, to pay the second-mortgage bonds or to offer any fair or reasonable compromise of the same, although the market value of its stock in the North Carolina railroad is about five million dollars, while the amount of the first mortgage is now only two million seven hundred and twenty thousand dollars ($2,720,000). The amount of the second-mortgage bonds now outstanding is about two hundred and fifty thousand dollars, but can only be ascertained with
11 certainty by such orders and processes of this court as may require by publication the holders of all said bonds to produce and prove them before a master of this court. The books of the treasurer of the defendant State are inconsistent and contradictory and confused as to the amount of such bonds now outstanding. The defendant State refuses to pay anything on the second-mortgage bonds except its offer of twenty-five per cent. of their principal which is some ten or eleven per cent. of the amount which is honestly and rightfully due.

X.

That during some twenty years after the so-called extension of the first-mortgage bonds by the agreement of 1880 (Exhibit "C"), the defendant State has been annually receiving dividends on its stock amounting to one hundred and eighty thousand — a year ($180,000), while the annual interest on the first-mortgage bonds has amounted only to the sum of one hundred and sixty-three thousand, two hundred dollars ($163,200), thus leaving an excess of sixteen thousand, eight hundred dollars ($16,800) per annum for the period of twenty years, making a total of three hundred and thirty-six thousand dollars ($336,000), which has been conveyed into the general fund of the State treasury and has been used for the ordinary expenses of the State. And the State is now receiving dividends on its stock, paid semi-annually at the rate of two hundred and ten thousand dollars ($210,000) a year, while the annual interest on the first-mortgage bonds is one hundred and sixty-three thousand, two hundred dollars ($163,200) a year, thus showing forty-six thousand, eight hundred dollars ($46,800) a year in excess of
the interest on the first-mortgage bonds, which forty-six
12 thousand, eight hundred dollars ($46,800) the defendant State refuses to pay over to the second mortgagees, notwithstanding their manifest rights to this fund on the facts hereinbefore recited.

XI.

That the defendant Charles Salter is a citizen of the State of New York, and the defendant Simon Rothschilds is a citizen of the State of New York.

XII.

That the defendant Simon Rothschilds is one of the holders and owners of the bonds hereinbefore described and designated as the first-mortgage bonds. Your orator is advised and believes and so alleges, that your orator is entitled to pay off and discharge the first-mortgage bonds, notwithstanding the so-called extension of 1880, and to this end to have a decree for a sale of the thirty thousand shares mortgaged or pledged as aforesaid, or for a sale of so many shares thereof as may be required to pay off and discharge the first and second mortgages. And to this your orator is entitled, as it is advised, whether or not the first mortgage shall be held in law to have continued to be a first mortgage after the so-called extension of 1880. That the holders of the first-mortgage bonds are very numerous, and it is impracticable for your orator to bring them before this court as defendants by the ordinary process of subpœna; that the interest of the defendant, Simon Rothschilds, is identical with all his associate holders of the first-mortgage bonds and he is made a party to this bill in order that he may defend for himself and for the benefit of all who have a general and common interest in the matters to be determined.

13 XIII.

That the defendant Charles Salter is one of the holders of the second-mortgage bonds, and your orator is advised that the rights of your orator cannot be fully administered without the presence before this court of the holders of the second-mortgage bonds. And the holders of the said second *second* mortgage bonds are very numerous and it is impracticable to bring them all before this court by personal service of subpœna, and he is made a party to this bill that he may defend for the benefit of himself and all his associate second-mortgage bondholders, the matters to be herein determined being of interest, general and common, to all of said bondholders.

XIV.

That your orator obtained title to the bonds herein declared on by assignment of Simon Schafer who is a resident and citizen of the State of New York, and whose place of business is thirty-five Wall street, in the city of New York. The said Schafer transferred, assigned and delivered to your orator the said bonds as an out-and-out donation to the State of South Dakota, with the request that the proceeds of said bonds, whether derived by sale, compromise or collection, should be applied by the said State for the benefit of its university; that said donation was accepted by the governor of the State of South Dakota in pursuance of its laws, and the said bonds are held by your orator as the absolute and unconditional owner

thereof without any obligation, understanding or agreement whatever between your orator and the said Simon Schafer, or between your orator and any other person or party, and the donation so
14 made by the said Simon Schafer was without any reservation, expressed or implied, for his benefit or for the benefit of any other person. And the acceptance of the donation by the State of South Dakota was absolute and unconditional, without any agreement, expressed or implied, that the bonds or their proceeds should be applied according to the request of said donor, but on the contrary, the bonds are the absolute property of the State to be used and applied as the State may determine.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendants may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator, it now prays the court:

1. That an account may be taken by or under the direction of this court, ascertaining the number and amounts of the bonds hereinbefore described and designated as first-mortgage bonds and second-mortgage bonds, together with the coupons to them attached and that publication be made requiring all holders of said bonds to prove them before a master of this court.

2. That the defendant, The State of North Carolina, shall pay unto the plaintiff the money which shall be found due on the ten bonds with coupons attached, set up and described in this bill of complaint; and that said payment in discharge of said bonds and coupons shall be made on or before a short day to be appointed for that purpose by this court.

3. That in default of the payment of the bonds and coupons on or before the short day named by this court, the defendant, The State of North Carolina, and all persons claiming or to claim by, from or under said defendant, may be absolutely barred and
15 foreclosed of or from all right and equity of redemption of, in and to the thirty thousand shares of stock described in this bill as being held and owned by the defendant, The State of North Carolina, and every part thereof, or of such number of shares of stock as may be directed by this court to be sold.

4. That the thirty thousand shares of stock of the North Carolina Railroad Company held and owned by the defendant, The State of North Carolina, and fully described in this bill of complaint, or so many shares thereof as may be necessary to pay off and discharge the two mortgages described in this bill and designated respectively as the first mortgage and the second mortgage may be sold under the direction of this court.

5. That the proceeds of the sale of the stock as may be made under the direction of this court shall be applied in due course and order; that is to say: First, to the payment of the necessary cost and allowances and expenses of this suit. Second, to the payment of the bonds and coupons secured by that one of the two mortgages, hereinbefore described, which this court may determine to be the

prior encumbrance. Third, to the payment of the bonds and coupons secured by that one of the two mortgages designated by this bill which may be determined by this court to be the junior or inferior encumbrance. Fourth, to the defendant, The State of North Carolina, such sum of money derived from such sale as may remain after and over and above the applications aforesaid.

6. That during the pendency of this suit a receiver be appointed to take into his possession the thirty thousand shares of stock of the North Carolina Railroad Company held and owned by the defendant, The State of North Carolina, and to collect all dividends
16 which shall accrue or become due on said stock, and to hold and disburse the same under the direction of this court.

7. For an injunction pending this suit prohibiting and enjoining the defendant, The State of North Carolina, from collecting or receiving any dividends derived from said thirty thousand shares of stock or any part thereof, and from collecting and receiving as the owner and holder of said thirty thousand shares of stock any moneys whatever accruing to said defendant, in that behalf, and commanding the said defendant, The State of North Carolina, to deliver to the receiver appointed by this court the certificate or certificates of stock held by said State in the North Carolina Railroad Company and commanding it to endorse the same in accordance with the charter, rules and by-laws of said corporation, the North Carolina Railroad Company, to the end that said receiver may have the said stock duly transferred to him on the books of said corporation, the North Carolina Railroad Company.

8. And that your orator may have all such other and further relief in the premises as the facts and circumstances and the nature of the case may require and to which it may be entitled in equity and good conscience.

May it please your honors to grant to your orators a writ of subpœna, to be directed to the said defendants, The State of North Carolina and the said Simon Rothschilds and the said Charles Salter, thereby commanding them at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and to
17 stand, perform and abide by such order, direction, and decree as may be made against them in the premises, as shall seem meet and agreeable to equity.

And your orator will ever pray.

JOHN L. PYLE,
Attorney General of South Dakota.
ROBERT W. STEWART,
Solicitor for Complainant.
WHEELER H. PECKHAM,
Of Counsel for Complainant.

EXHIBIT "A."

No. 4246.

UNITED STATES OF AMERICA:

(This certificate of debt is not subject to taxation for any purpose whatever.)

It is hereby certified that the State of North Carolina justly owes to —— —— or bearer, one thousand dollars, redeemable in good and lawful money of the United States at the National Bank of the Republic in the city of New York on the 1st day of July, 1897, with interest thereon at the rate of 6 per cent. per annum, payable half yearly at the said bank on the 1st days of January and July in each year from the date of this bond and until the principal be paid on surrendering the proper coupon hereto annexed.

In witness whereof, the treasurer of the said State, in virtue
18 of power conferred by law, hath signed this bond, and caused the seal of his office to be hereto affixed, and her comptroller hath countersigned the same at the seat of government of the said State, this 1st day of July, 1867.

KEMP P. BATTLE,
Public Treasurer.

Countersigned:
S. W. BURGIN, *Comptroller.*

(Issued by authority of an act of the legislature of North Carolina to incorporate the Western North Carolina Railroad Company, chapter 228.)

Coupon.

The State of North Carolina will pay to bearer at the National Bank of the Republic, in the city of New York, on the 1st day of January, 1869, thirty dollars on bond 4246 for $1,000.

$30. KEMP P. BATTLE,
Public Treasurer.

And the said bond contains the following indorsement on the back thereof:

STATE OF NORTH CAROLINA,
TREASURY DEPARTMENT,
RALEIGH, *July* 1, 1867.

Under the provisions of an act of the General Assembly of North Carolina, entitled, "Act to enhance the value of the bonds to be issued for the completion of the Western North Carolina Railroad Company and for other purposes," ratified 19th December, 1866, ten shares of the stock in the North Carolina Railroad Company originally subscribed for by the State, are hereby mortgaged as collateral security for the payment of this bond.

Witness the signature of the public treasurer and seal of office, and the counter-signature of the comptroller.

KEMP P. BATTLE,
Public Treasurer.

S. W. BURGIN, *Comptroller.*

19 EXHIBIT "B."

"An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina railroad, and for other purposes.

"Whereas, the legislature of North Carolina, at its session of 1854–'55, passed an act entitled, 'An act to incorporate the Western North Carolina Railroad Company,' and at its session of 1860–'61, an act entitled, 'An act to amend the charter of the Western North Carolina Railroad Company;' and

"Whereas, by the combined force of said acts, the faith of the State of North Carolina was pledged for the payment of four millions of dollars in bonds of the State, a portion of which have already been issued; and

"Whereas, it is manifestly the interest of the people of the whole State that the residue of the bonds, when issued, shall command a high price in the market; therefore,

"SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by authority of the same, That the public treasurer be and he is hereby authorized and directed, whenever it shall become his duty under the provisions of said acts, passed at the sessions of 1854–'55 and 1860–'61, to issue bonds of the State to the amount of fifty thousand dollars or more, to mortgage an equal amount of stock which the State now holds in the North Carolina railroad, as collateral security for the payment of said bonds, and to execute and deliver, with each several bond a deed of mortgage for an equal amount of stock *to* (of) said North Carolina railroad, said mortgage to be signed by the
20 treasurer and countersigned by the comptroller, to constitute a part of said bond, and to be transferable in like manner with it, as provided in the charter of said Western North Carolina Railroad Company; and further, that such mortgage shall have all the force and effect, in law and equity, of registered mortgages without actual registry.

"SEC. 2. Be it further enacted, That the president and directors of said Western North Carolina Railroad Company be and are hereby, authorized and empowered to issue bonds of the company, running for such term of years as they may deem expedient, and bearing interest at a rate not greater than 8 per cent. per annum, and to make, execute and deliver a deed or deeds of mortgage, conveying the whole or a portion of the right, title and interest of the company, in any or all the estate, both real and personal, belonging to said company, or in any manner pertaining to the same, to the purchaser or

purchasers of said bonds of the company, and conditioned for securing the payment of said bonds at maturity; and also to pledge the profits of said company, or so much thereof as may be necessary, for the payment of interest on said bonds as it falls due; and said bonds shall be issued by said president and directors, whenever it shall appear to them necessary, for the completion of said road, to raise funds in addition to the State's subscription; and the proceeds arising from the sale of said bonds shall be applied for the purpose of finishing the road to its western termini.

"SEC. 3. Be it further enacted, That this act shall be in force from and after its ratification.

"Ratified the 18th day of December, A. D. 1866."

21 EXHIBIT "C."

RALEIGH, N. C., ——, 1886.

The commissioners appointed under the act of 14th of March, 1879, to adjust and renew that portion of the State debt incurred to aid in the construction of the North Carolina railroad, announce that they are prepared to execute the act according to the terms of the following agreement, which has been subscribed to by the holders of a very large amount of the bonds:

"1. Whereas, under an act of the General Assembly of North Carolina, ratified on the 14th day of March, A. D. 1879, entitled 'An act to adjust and renew a portion of the State debt,' the governor of said State was authorized to appoint three commissioners to carry said act into execution, by the exchange of bonds therein mentioned for new bonds, to be issued by the said State under the provisions of the said act; and whereas, George Davis, Montford McGehee and Donald W. Bain have been appointed by the governor of the said State commissioners for the purposes mentioned in said act. Now, therefore, we, the undersigned, holders of bonds of the said State in said act mentioned and described, do hereby severally, and not jointly, propose and agree to and with the said George Davis, Montford McGehee and Donald W. Bain, to exchange with them, as commissioners as aforesaid, all of the said bonds owned, held and controlled by us, in the following terms, viz:

"2. We are to deliver said bonds to said commissioners, with coupons attached thereto, falling due on the 1st day of July, 1878, or on the 1st day of October, 1878, as the case may be, and all coupons falling due subsequent to that date. In case any of said
22 coupons have been detached from said bonds and are not delivered therewith, the amount of such detached coupons shall be noted on the certificate of the commissioners, and in the issuing of the new bonds the treasurer shall cut off from them and retain the first maturing coupons for thirty dollars, to the amount of the missing coupons, and shall deliver the coupons so cut off to the holders of the said old missing coupons, in exchange therefor, whenever the same shall be presented. The balance due on coupons of said bonds due anterior to the 1st day of July, 1878, is to be paid

without interest out of the balance of dividends on the stock owned by the State in the North Carolina Railroad Company, not heretofore distributed in the suit known as the Swasey suit (hereinafter mentioned); and if that is not sufficient for that purpose, then out of the surplus of the dividends on the stock owned by the State in the said railroad company, which shall not be applied to the payment of the interest on the new State bonds to be issued under the said act.

"3. In exchange for the bonds thus delivered by us we are to receive new bonds equal in amount to the principal of the bonds delivered by us to said commissioners, which shall be issued by the said State in all respects in accordance with the provisions of the act above referred to, with semi-annual coupons attached thereto for interest of thirty dollars each, the first of which shall become due and *and* payable on the 1st day of October, 1882, except that the first coupon of the new bonds issued in renewal of the old January and July bonds shall be for forty-five dollars instead of thirty dollars, so that the interest on each class of bonds may be equalized, it being the intention of this contract that the bondholders shall rebate to the State two hundred and forty dollars of interest on each bond delivered for renewal.

23 "4. The surplus of the dividends received under said act on the stock owned by the State in the North Carolina Railroad Company, and applicable to the said old bonds after paying the interest on the said new bonds, shall remain as and constitute a sinking fund for the payment of the interest due before the first day of July, 1878, on such of the said old bonds as have not been presented and proved in the suit known as the Swasey suit, now pending in the United States circuit court for the eastern district of North Carolina; and after such interest is paid, then for the payment of interest and principal of said new bonds issued under said act, and shall be sacredly held and applied to this purpose and none other; and such surplus shall be invested in the purchase of the new 4 per cent. bonds of the said State; and all of the bonds thus purchased shall be stamped and marked as the sinking fund for that purpose.

"5. The certificate for the stock owned by the State in the North Carolina Railroad Company shall be held by the public treasurer, after the same shall have been returned to the State by order of the court in the said Swasey suit until the said new bonds are paid in full, and no lien, mortgage or other incumbrance shall be placed or made on the said stock, or by the said railroad company, which shall have a priority over the lien of said bonds on said stock.

"6. And it is understood and is hereby expressly declared to be the true intent and meaning of this agreement that the new bonds to be issued hereunder are given, not in payment, but in renewal and extension only of the old bonds, and without prejudice to the lien of the said old bonds on the State's stock in the North Carolina Railroad Company, which lien is preserved unimpaired for the security of the new bonds as fully as the old bonds are now secured thereby."

24 "The undersigned commissioners for the State of North Carolina, appointed under and by virtue of the act of the 14th March, 1879, entitled, 'An act to adjust and renew a portion of the State debt,' do hereby, in behalf of the said State, approve, ratify and adopt the annexed and foregoing agreement and contract.

"GEO. DAVIS,
"M. McGEHEE,
"D. W. BAIN,
" *Commissioners.*"

"EXECUTIVE AND TREASURER'S OFFICE,
"RALEIGH, *June* 14, 1882.

"We, the undersigned, governor and treasurer of North Carolina, having examined the plan of adjustment of that part of the State debt contracted for the construction of the North Carolina railroad, as set forth in the foregoing contract, do hereby approve the same and do fully authorize, so far as we are empowered to do, the commissioners to proceed with the settlement as set forth in said contract.

"THOMAS J. JARVIS, *Governor.*

"J. M. WORT–,
" *Public Treasurer.*"

By the terms of the agreement the old bonds are to be delivered to the commissioners, with coupons attached, falling due July 1, 1878, or October 1, 1878, inclusive, as the case may be, and all coupons falling due subsequent to that date.

The commissioners will, as required by the act, issue to each person delivering the old bonds a certificate setting forth the number and amount of new bonds to which he may be entitled in renewal thereof. Upon the presentation of the certificate to the treasurer of State, he will deliver to the owner *of* the new bonds, with
25 coupons attached, from October 1, 1882, inclusive, subject to the provisions of paragraph 2 of the contract.

The new bonds run forty years.

The commission of one-half of one per cent. ($5 per bond), which the commissioners are to receive under the act, is upon the face of the bond, the same to be paid when the bonds and coupons are delivered to the commissioners.

The commissioners are prepared to issue the certificates, and the State treasurer will issue the new bonds.

Packages of bonds transmitted by express should be addressed to C. M. Busbee, secretary of the commission, at Raleigh, charges prepaid, and bonds presented by the holders in person will be received by him at the office of the State treasurer.

GEORGE DAVIS,
MONTFORD McGEHEE,
CHARLES M. BUSBEE,
Commissioners.

(Endorsed :) Supreme Court U. S., October term, 1901. Term No. 11, original. The State of South Dakota, complainant, *vs.* The State of North Carolina *et al.* Bill of complaint. Filed Nov. 18, 1901.

26 In the Supreme Court of the United States, October Term, 1901. In Equity.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES Salter, and Simon Rothchilds, Defendants. } No. 11, Original.

The Answer of The State of North Carolina, by Robert D. Gilmer, Its Attorney General, to the Bill of Complaint of The State of South Dakota, Complainant.

This defendant, now and at all times hereafter saving and reserving unto herself all benefit of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, and especially protesting that this court has no jurisdiction of either the parties to or of the subject-matter of this suit, because the matters complained of do not constitute, within the meaning of the Constitution of the United States, any controversy between the States of South Dakota and the State of North Carolina, or any of her citizens; for answer thereunto, or unto so much and such parts thereof
27 as this defendant is advised is material or necessary for her to make answer unto, this defendant, answering, saith :

I.

That she denies that she has any knowledge or information sufficient to form a belief, save by the bill of complaint herein, as to the truth of the allegation contained in the first paragraph thereof, to wit, that the said complainant "is the holder and owner in its own right, and is in the actual possession" of the "ten certain writings obligatory or bonds with coupons thereto attached," as in said bill of complaint described; and this defendant therefore denies the said allegation and demands strict proof thereof.

This defendant further says that she is informed and believes, and so alleges, that if the complainant is in the possession of said "writings obligatory," by assignment or otherwise, such transfer of possession and indicia of ownership are purely colorable and collusive, and made for the purpose of evading the provisions of the eleventh amendment of the Constitution of the United States, all of which will be hereinafter more particularly set forth in this answer.

II.

This defendant further says that it is true that certain "writings obligatory or bonds with coupons attached," as described in paragraph one of complainant's bill of complaint, and designated as

second-mortgage bonds ($800,000, dated July 1, 1867; $1,323,000, dated January 1, 1868, and $340,000, dated October 4, 1868, amounting in all to $2,463,000), were issued by the treasurer of the defendant State, and that the same purported to have been issued by authority of an act of the General Assembly of North Carolina, entitled "An act to incorporate the Western North Carolina Railroad Company," being chapter 228 Acts 1854–'55; but this de-
28 fendant alleges that the same were not issued and sold according to the provisions of the said act, which in section 37 provides as follows, to wit:

"*Be it further enacted*, That so soon as it shall become necessary to issue the bonds aforesaid, the public treasurer shall advertise in one or more newspapers, as he may think best, and invite sealed proposals for such amount of the aforesaid subscription as may be wanted at any one time, and it shall be his duty to accept those terms which may be most advantageous to the State: *Provided*, That in no event shall any of the bonds be sold for less than their par value; and any premium which may be obtained on the sale of said certificates shall be placed in the public treasury and used as other public funds, and kept or invested to pay the interest on the debt hereby authorized."

That no advertisement in the newspapers for sealed proposals was made as by said act required, but said bonds were issued and by private arrangement turned over to the authorities of the said Western North Carolina Railroad Company, who, as the defendant is informed and believes, and so alleges, sold them at a price greatly below par, thus preventing the State from receiving any premium which might have been realized by means of public advertisement and sale as provided. The defendant therefore denies that the said "writings obligatory or bonds and coupons" are valid obligations of the State, and alleges that the complainant and its assignors, both immediate and remote, had notice of the non-compliance of the said law providing for their issue and sale. And furthermore, well knowing that the defendant had denied their validity and had refused to pay interest thereon, the alleged assignors of complainant, both immediate and remote, purchased the same, as the defendant is informed and believes, and so alleges, at a purely speculative price, and for not more than twenty-five cents on the dollar. And the defendant further saith that it was the intent and direction of the Gen-
29 eral Assembly that the public treasurer should sell the bonds and pay the money to the railroad company, and there was a prohibition against selling for less than par, as above stated; that the State of North Carolina was interested that the railroad should be built and completed by as small an outlay of State bonds as possible, and furthermore, that the said railroad should be speedily completed, and the private arrangement above stated defeated the purposes of the State in these respects.

The defendant, further answering, denies any and all parts of paragraphs one and two of the said bill of complaint not herein admitted.

III.

The defendant, answering paragraph three (3) of the complainant's bill of complaint, admits "that at the time of the passage of the said act of 1866, the defendant, The State of North Carolina, was the owner (subject to the statutory lien or mortgage hereinafter set out, and to be designated as 'first mortgage') of thirty thousand shares of stock in the North Carolina Railroad Company, of the par value of three million dollars (shares one hundred dollars par)." And the defendant further admits that the State treasurer was directed, whenever certain bonds were regularly and lawfully issued under the above act, to execute mortgages as additional security to the same upon an equal amount of stock held by the State in the said North Carolina Railroad Company; but the defendant saith that the said act provided that the said transaction should be made and perfected in a particular form and manner—the provision being that the treasurer should "execute and deliver with each several bond a deed of mortgage for an equal amount of stock" in the said North Carolina Railroad Company. But this defendant denies that the several mortgages to be made by the treasurer as contemplated by the said act were ever executed, and insists that the endorsement on the said bonds as set forth in the said bill of complaint was not made in pursuance of or in conformity to the provisions of the act of the General Assembly of North Carolina (chapter 106 of the Laws of 1866–'67, referred to in complainant's bill herein), and did not have the effect of a conveyance or transfer by way of mortgage, either in law or in equity, of any of the said stock, nor did it confer a lien by way of pledge or otherwise upon the same. That no certificates of stock are numbered or otherwise identified, nor has there ever been any delivery of any shares of said stock to any of the said bondholders, or to any one for them. And the defendant further saith that the said attempted mortgages or liens are also void because of the illegal issue and sale of the bonds, as stated in paragraph two (2) of this answer.

IV.

The defendant admits paragraph four (4) of the bill of complaint herein.

V.

The defendant admits paragraph five (5) of the bill of complaint, except so much thereof as alleges that the complainant and other holders of bonds which were issued in aid of the Western North Carolina Railroad Company after the passage of the act of 1866, have a second-mortgage or equitable lien upon such an amount of the said stock as would equal in its par value the principal or par of said alleged second-mortgage bonds; and as to this part, the defendant denies the truth thereof.

VI.

The defendant, answering paragraph six (6) of the bill of complaint, says that it is true that an adjustment of the first-
31 mortgage bonds was made in pursuance of chapter 138, Acts 1879, and in accordance with the terms set forth in Exhibit "C," attached to the bill of complaint herein; but this defendant utterly denies that the said new bonds were not in law and in fact substituted for the original bonds, and alleges that it was expressly agreed that the new bonds were not given in payment, but only in renewal or substitution of the old bonds, and that the original lien on the stock of the said North Carolina Railroad Company was to be "preserved unimpaired for the security of the new bonds as fully as the old bonds" were "secured thereby." This defendant further saith that the effect of the transaction was simply a substitution of the new for the old bonds, certain interests on the old bonds being remitted.

VII.

The defendant admits that the terms of said adjustment are set forth in Exhibit "C," as alleged in paragraph seven (7) of the bill of complaint; but saith that the act of 1879, chapter 138, should be taken and considered as a part of said agreement and adjustment, a copy of which act is attached hereunto, marked Exhibit "A," and which defendant prays may be considered a part of this answer.

VIII.

The defendant, answering paragraph eight (8) of the complaint herein, saith that she has never heard or been informed, save by the complainant's bill of complaint, whether the complainant, its assignors or any prior holder of the bonds declared on, were parties to or assented to the said adjustment; but defendant denies that other holders of said mortgage bonds did not consent thereto, and alleges that, on the contrary, a large number of the said bondholders, to the extent of at least $2,213,000, assented to the said adjustment by exchanging, under the provisions of chapter 98, Acts
32 1879, their bonds for new ones (unsecured except by the faith of the State), at the rate of twenty-five per cent. of the principal thereof, so that all of the alleged second-mortgage indebtedness, amounting to about $2,463,000, has been settled by the exchange aforesaid, except, as far as can be ascertained, about $250,000. The defendant denies the remaining parts of said paragraph, although she is advised that she is not compelled to answer thereto, the same being merely allegations of law.

IX.

The defendant answering the ninth (9) paragraph of the bill of complaint, saith that it is true that by act of her General Assembly (chapter 98, Acts 1879) the defendant offered to settle the said alleged second-mortgage bonds by issuing and exchanging new interest-bearing bonds at the rate of twenty-five per cent. of the principal

of the said bonds, which said offer was accepted by all of the said bondholders except to the amount of about $250,000. This defendant further saith, that, under the circumstances, the said offer was fair and reasonable, as will appear by reference to her financial condition at that time. The indebtedness of the State, including the bonds issued in aid of the Western North Carolina Railroad Company, referred to in the bill of complaint, was then about $18,000,000 principal, on which there was due and unpaid about $8,000,000 interest, and it was claimed that she was further indebted in the sum of $12,000,000, evidenced by bonds called "special-tax bonds," on which there was due about $5,000,000 interest, which indebtedness was not recognized by the State as valid obligations. That, owing to her impoverished condition as a result of the civil war, the taxable value of the entire property of the State, both real and personal, tangible and intangible, was only about $140,000,000.

That being utterly unable to pay the current expenses of the
33 State government, to make proper provisions for the public charities and public schools, to pay the interest on the said indebtedness, and being practically in a state of bankruptcy, she endeavored to so adjust this debt as to put it into manageable shape, and this, not only for her own benefit, but for the benefit of her various creditors. Accordingly, it made offers of an adjustment of its indebtedness, which was generally accepted, and except a small fraction, its entire indebtedness, except the "special-tax bonds," above mentioned, was adjusted, in which adjustment was included the first-mortgage bonds mentioned in the bill of complaint herein.

That at the time of the said adjustment, the income of the State from the said stock of the said North Carolina Railroad Company was barely sufficient to pay the current interest on the said first-mortgage bonds, while there was due and unpaid interest to a large amount, to wit, about $750,000, and the property would not have brought an amount sufficient to have paid the said first-mortgage bond indebtedness. Under these circumstances, not only was there no surplus with which to pay the interest on the said second-mortgage bonds, but the security itself, even if valid, was worthless, the stock, as above stated, not being of sufficient value to have paid the first-mortgage bonds, together with the past-due interest thereon, the said stock then being in the hands of a receiver appointed by the Federal court. That under these conditions the defendant denies that her offer of settlement as aforesaid by the exchange of new bonds and to pay the interest thereon out of the revenue derived from general taxation (which it has faithfully done as to the bonds so issued in exchange), was unfair or unreasonable.

And this defendant, further answering the said paragraph of the complaint, denies that it has ever refused to pay the complainant
the bonds declared on in its bill of complaint herein, the said
34 complainant never having demanded payment of the same, nor having even informed the defendant of its alleged acquisition of the same, except by the filing of this bill of complaint.

X.

The defendant, answering the tenth paragraph of the bill of complaint, saith: That but for the said just and equitable settlement made with the said bondholders, there would be no surplus left after paying the interest on said indebtedness; and that such surplus should, in good morals and equity, be held by the State to be applied to the payment of the principal and interest of those bonds whose holders, by their action, made the existence of such a surplus a possibility.

XI.

The defendant, answering the eleventh (11) paragraph of the bill of complaint, saith that she has no knowledge, save by the bill of complaint, of the citizenship of Charles Salter and Simon Rothchilds.

XII.

The defendant, answering the twelfth (12) paragraph of the bill of complaint, saith that she has no knowledge or information, save by said bill of complaint, as to the ownership by Simon Rothchilds of any of the said first-mortgage bonds, or that his interest is identical with that of all other holders of the said first-mortgage bonds, and the defendant therefore denies the same. The defendant also denies the correctness of the remainder of said paragraph, although she is advised that she is not required to answer thereto, the same being merely allegations of law.

XIII.

The defendant, answering the thirteenth (13) paragraph of
35 the bill of complaint herein, saith that she has no knowledge or information, save by said bill of complaint, as to the ownership of any of the said alleged second-mortgage bonds by said Charles Salter, and therefore denies the same.

The defendant, further answering, saith that, if it be true that the said Charles Salter is a holder of any of the said alleged second-mortgage bonds, he is substantially a complainant in this suit, his interests and those whom he represents being identical with those alleged by the complainant. And this defendant is advised that he should be arrayed and treated for all purposes, and especially on the question of jurisdiction, as a party complainant in this suit.

XIV.

The defendant, answering paragraph fourteen (14) of the bill of complaint, saith that she has no knowledge or information, save by the said bill of complaint, as to the transfer and assignment of the bonds declared upon, as set forth in the said paragraph, and therefore denies the same. This defendant, further answering said paragraph, saith that if it be true that such an assignment or transfer was made, she is informed and believes, and so alleges, that it was not *bona fide*, but merely colorable and collusive, and in pursuance

of an unlawful combination for the purpose of evading the eleventh amendment to the Constitution of the United States, such combination being between the governor of the complainant State or his agents and the said Simon Schafer, of the State of New York, who, together with his brother and partner, S. M. Schafer, is the owner, as the defendant is informed and believes, and so alleges, of about 234 of the said alleged second-mortgage bonds of $1,000 each, being nearly all of the same that are now outstanding against the defendant. This defendant alleges that shortly before the alleged assignment of the bonds herein declared upon to the complainant, the same
36 being then overdue, the said Simon Schafer and brother and partner presented as aforesaid a petition to the General Assembly of the defendant State, in January, 1901, praying a settlement of said bonds held by the said Schafers, the bonds herein declared upon being among the number, and that the defendant failing to offer a settlement more favorable than had previously been accepted by the remainder of the said alleged second-mortgage bondholders (of all of which facts the complainant State had notice), and the said Schafer and brother and partner being unable to sue the State as they stated in their said petition, the said Schafer, as this defendant is informed and believes, and so alleges, thereafter concocted this scheme of colorable and collusive assignment of a small part of said bonds for the purpose of fraudulently obtaining the jurisdiction of this honorable court, not only for the purpose of enforcing the ten bonds declared upon herein, but also and chiefly for the purpose of drawing into said jurisdiction all of the outstanding bonds and collecting the amount due upon those held by him, and his said brother and partner. And this defendant is informed and believes, and so alleges, that the said Schafer and other individual bondholders, have employed counsel for the prosecution of this suit, which is brought for the purpose of carrying out such scheme in pursuance of such unlawful combination on the part of the said Schafer and brother and partner and the complainant State through its governor or other agents. And this defendant further saith, that while this suit is in form a suit by complainant State, it is really and truly brought on behalf of individuals, and is in substance a suit by the said Schafer and other individual bondholders against the State of North Carolina, contrary to the provisions of the eleventh amendment to the Constitution of the United States.

37 XV.

This defendant, further answering, saith that she has never, in the whole period of her history, had any compact or agreement whatsoever, other than that contained in the Constitution of the United States, with the complainant, The State of South Dakota, nor has the said complainant State ever informed the defendant, The State of North Carolina, that it had any claim against her, nor made any demand of her in respect to the same, nor any effort to settle or accommodate the same—the first information the defendant having had of the claim of the complainant in connection with the

bonds herein declared upon, being the filing of the bill of complaint herein. This defendant therefore denies that there was and is a controversy within the meaning of the Constitution of the United States between the complainant State of South Dakota and the defendant State of North Carolina.

Wherefore, this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered, according to her best knowledge and belief, humbly prays this honorable court to enter its judgment that this defendant be hence dismissed, with her reasonable costs and charges in this behalf most wrongfully sustained.

ROBERT D. GILMER,
Attorney General of North Carolina.
JAMES E. SHEPHERD,
GEORGE ROUNTREE,
JAMES H. MERRIMON,
Of Counsel for Defendant.

38 EXHIBIT A.

An act to adjust and renew a portion of the State debt.

The General Assembly of North Carolina do enact:

SECTION 1. That in order to renew and adjust a portion of the State debt incurred to aid in the construction of the North Carolina railroad, and obtain an extension of time for paying the same and reduce the rate of interest thereon, the governor of the State is hereby authorized to appoint three commissioners for the purpose of negotiating with the holders of the said bonds and contracting with them for a renewal of the said debt on terms which may be advantageous to the State, and which are approved of by the governor and public treasurer.

SEC. 2. The said commissioners shall be and they are hereby authorized, with the advice and consent of the said governor and public treasurer, to contract and agree with the holders of said old bonds for the renewal of the same with new bonds, to be issued under the provisions of this act, upon such terms as may be agreed on by and between the said commissioners and the holders of said bonds.

SEC. 3. The said commissioners shall issue to each and every person delivering to them such old bonds, in accordance with the terms of renewal which may be agreed on, a certificate which shall state the date, amount and number of the bonds and coupons delivered to them by each person, and number and amount of the new bonds which such person may be entitled to receive in renewal thereof. They shall file a copy of said certificate with the public treasurer immediately after the issue thereof.

SEC. 4. The said commissioners, with the advise and consent of the governor and public treasurer, shall have power to sell said new bonds at par and invest the proceeds thereof in the pur-
39 chase of the said old bonds: *Provided*, That no sale of such new bonds shall be made by said commissioners unless the

proceeds thereof can be immediately invested in the purchase of said old bonds at a rate not greater than that at which they are being exchanged for new bonds, and not more than fifty thousand dollars of said bonds shall be sold at the same time, nor shall a future sale of bonds be made until the proceeds of previous sales have been invested in the purchase of bonds as aforesaid. Upon the sale of such bonds, the commissioners shall issue a certificate to the purchaser thereof, stating the number and amount of such bonds to which such purchaser is entitled.

SEC. 5. Upon presentation of said certificate to the public treasurer, he shall deliver to the owner thereof the number and amount of State bonds to which he may be entitled according to said certificate, and for the purpose of effecting the renewal of said bonds and carrying out the purpose of this act, the public treasurer is hereby authorized and directed to issue bonds of the State, payable forty (40) years from the first day of April, anno Domini one thousand eight hundred and seventy-nine, bearing interest from the first day of April, one thousand eight hundred and seventy-nine, at such a rate as may be agreed upon, not to exceed six per cent. per annum, payable semi-annually on the first day- of April and October of each and every year until the principal shall be due.

SEC. 6. The said bonds shall be coupon bonds of the denomination of fifty, one hundred, five hundred and one thousand dollars each, and shall be signed by the governor and public treasurer, and shall be sealed with the great seal of the State; the coupons thereon may be signed by (the) treasurer alone, or have a fac-simile of his signature printed, engraved or lithographed thereon, and the said bonds and coupons shall, in all other respects, be in such form as the treasurer may direct, and shall express on their face that they are issued in renewal of said bonds; and the coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State, of every kind whatsoever, which shall be expressed on the face thereof.

SEC. 7. The public treasurer, before delivering any of said bonds under the provisions of this act, shall record in a well-bound book an accurate account and descriptive list of the said bonds, which shall embrace the date, amount and number thereof, and the name of the person to whom issued, and shall receive and cancel the certificate issued by said commissioners on which such bonds are issued by him; but no bonds shall be issued by the public treasurer but in execution of the provisions of this act.

SEC. 8. The said new bonds and coupons shall be exempt from all taxation whatsoever, State, county and municipal, general and special, and the same shall be expressed on the face thereof; and shall in all respects stand in the place of and be entitled to the same securities as are the old bonds and coupons aforesaid, and shall have the same lien on the stock of the State in the said railroad company which the said bonds and coupons now have; and the public treasurer shall apply the dividends received by the State on its stock in said company to the payment of the coupons on said new bonds.

SEC. 9. It shall be lawful for any executor, administrator, guard-

ian, trustee, and all persons acting in a fiduciary character, holding any of the bonds hereby authorized to be exchanged, to make the exchange provided for in this act for the bonds herein authorized to be issued; and they shall be absolved from liability or responsibilty to any person having any interest in such bonds on account of such transfer and exchange; and they shall have the power to invest any trust fund held by them in the bonds authorized to be issued
41 by this act, and the same shall be taken and regarded in all the courts of this State as a good, legal and valid investment of such trust funds by such fiduciary.

SEC. 10. The said commissioners shall hold all the bonds and coupons delivered to or purchased by them in trust for the payment of the principal and interest on the said new bonds, and shall collect and receive all payments and dividends paid and made on said old bonds and coupons so held by them from any person authorized to pay the same; and said commissioners shall pay the amount thus received to the public treasurer, and they shall be applied by him to the payment of the interest on the new bonds issued in pursuance of this act. The said old bonds shall not be cancelled, but shall remain in force until the governor shall direct the same to be delivered to the public treasurer for cancellation, at which time the said bonds shall be cancelled by the public treasurer in the presence of the governor; and they shall certify under their hands the number, amount and date of bonds and coupons cancelled by them, which certificate shall be safely kept in the office of the public treasurer.

SEC. 11. The commissioners hereby authorized to be appointed shall enter into bonds, payable to the State, in the penal sum of fifty thousand dollars, with good security, to be accepted by the public treasurer, and conditioned for the faithful performance of their duties, and shall receive as compensation for their services a commission of one-half of one per cent. on the amount of all bonds purchased by them, to be paid by the person or persons from whom the same may be purchased, and shall in no case receive any compensation from the State.

SEC. 12. In case of the death, resignation or removal of the said commissioners, or either of them, the governor shall have power to appoint other persons to fill such vacancies.

SEC. 13. This act shall be in force from and after its ratification.

Ratified 14th day of March, A. D. 1879.

42 (Endorsed:) Supreme Court, U. S., October term, 1901. Term No. 11, original. The State of South Dakota, complainant, *vs.* The State of North Carolina *et al.* Answer of the State of North Carolina. Filed April 2d, 1902.

43 The Supreme Court of the United States.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
STATE OF NORTH CAROLINA, CHARLES SALTER, and Simon Rothschild, Defendants. } No. 11, Original.

The answer of Charles Salter, one of the defendants to the bill of complaint of The State of South Dakota, complainant, respectfully shows unto the court:

I.

That this defendant admits the allegation of the 1st article of said bill, with regard to the ownership and possession of the State of South Dakota regarding the ten bonds of defendant State.

II.

That this defendant admits the allegations of the 2d article of said bill, setting forth the issuance of said bonds under acts of the General Assembly of the State of North Carolina.

III.

This defendant admits the allegation of the 3d article of said bill, setting forth that the defendant State of North Carolina was owner of 30,000 shares of stock in the North Carolina Railroad Company, describing them, subject to a prior lien; and that the bonds mentioned in said article were endorsed as in said article stated.

44 IV.

This defendant admits the allegations of the 4th article of said bill, in relation to the incorporation of the North Carolina Railroad Company, and its capital stock, the subscription thereto, and the ownership by said State of shares.

V.

This defendant admits the allegations of the 5th article of said bill, setting out that the effect of the legislative action of the defendant State of North Carolina gives the first-mortgage bondholders a lien upon all the State's stock in the North Carolina Railroad Company; and gave to complainant and the other holders of bonds issued in aid of the Western North Carolina Railroad Company, including this defendant, a second mortgage upon such an amount of said stock as should equal in its par the principal or par of the first-mortgage bonds, of which this defendant, as aforesaid, is a holder.

VI.

This defendant admits the allegations of the 6th article of said bill of *said* complaint, in relation to the first-mortgage bonds secured upon said stock having been extended, or attempted to be extended,

under the provisions of the certain acts which are set forth. And this defendant shows to the court that the effect of the action of said defendant State, set out in said article 6, was to effect an alleged extension of the bonds mentioned; but this defendant shows to the court that said attempted extension was ineffective, for the reason that holders of second-mortgage bonds, including this defendant, were not parties to the arrangement between the holders of
45 the first-mortgage bonds and the State of North Carolina for such attempted extension, which arrangements are set out in said article 6.

VII.

This defendant admits that the terms of the compromise between the defendant State of North Carolina and the holders of the first-mortgage bonds are correctly set out, as alleged in article 7.

VIII.

This defendant shows to the court, as respects the matter of said article 8, that he is advised by counsel and submits to the court that the compromise agreement, Exhibit C, to said bill, was merely an attempted extension of the time of maturity of said first-mortgage bonds and that the extension aforesaid affects the holders of second-mortgage bonds, including this defendant, and was and is unlawful and void, in that it extends the maturity of the first-mortgage bonds without the consent of the second mortgagees, who took their mortgage long before the attempted extension, including this defendant, and who acquired a vested right to pay off and redeem the first mortgage according to its terms and as respects maturity as it then existed.

IX.

This defendant admits the allegations of paragraph 9 of said bill in respect to the offer of compromise made by the State of North Carolina for the second-mortgage bonds, some of which are held by this defendant; and admits particularly the allegations of said paragraph in regard to the market value of the stock of the defendant State in the North Carolina Railroad Company. And this defendant shows to the court that this defendant has refused, and
46 now refuses, to accept the compromise of said second-mortgage bonds, for the reason that the faith of said defendant State issuing said bonds is obligated to pay them in full; and, for the further reason that the stock securing the said second-mortgage bonds is of sufficient value, over and above the lien of the first-mortgage bonds, to pay the second-mortgage bonds in full, and leave a surplus. This defendant is unable to state to the court the amount of the second-mortgage bonds with exactness.

X.

This defendant admits the allegations in the 10 article of said bill, touching the dividends upon the stock of the defendant, and the misappropriation of same by the defendant State.

XI.

This defendant admits the allegations of the 11th article of said bill, that this defendant is a citizen of the State of New York, and that the defendant Simon Rothschild is a citizen of the State of New York.

XII.

As to article 12 of said bill; this defendant has no knowledge with regard to the ownership by the defendant Simon Rothschild of some of the bonds designated and known as first-mortgage bonds, but he is informed and believes it to be true that the said Simon Rothschild is such owner of such bonds. This defendant is advised by counsel, and submits to the court, that the complainant is entitled to pay off and discharge the first-mortgage bonds, notwithstanding the attempted extension of 1880; and is entitled to have a decree for the sale of the 30,000 railroad company shares, mortgaged
47 and obligated as set out in said bill; and is entitled to have such sale free from incumbrances,—that is to say, free from the lien of the first mortgage and free from the lien of the second mortgage. This defendant shows to the court in this regard that the debt of the first mortgagees is due and payable, and that the debt of the second mortgagees, including this defendant, is due and payable; and that he is advised and submits that the bill in this cause is, in effect, both a bill to foreclose the second mortgage and a bill to redeem from the first mortgage, inasmuch as the said bill seeks to have all of said stock sold free of all incumbrances. And this defendant further shows to the court in this regard that he is advised by counsel and submits that all the said stock, securing the second issue of bonds aforesaid, is a security for each bond, and that no specific shares of stock are mortgaged for any specific bond, and that this defendant has a proportional interest in all of said stock securing the second issue of bonds, and that this defendant is entitled to be paid *pro rata* with all the other bondholders of the same issue.

XIII.

This defendant admits that he is one of the holders of second-mortgage bonds, as stated in said article 13 of said bill, and that his holding is of the following number of said second-mortgage bonds, to wit — bonds, and that said bonds are numbered as follows: — that the rights of complainant cannot be properly administered without the presence before the court of holders of second-mortgage bonds. Defendant admits and states that the holders of second-mortgage bonds, and the holders of first-mortgage bonds
48 also, are numerous, and they cannot be brought before the court by personal service, and that, in all probability, some of them cannot be found. And this defendant is advised and submits that, the individual holders of second-mortgage bonds have a lien jointly with the complainant, on all the stock which is subject to the second mortgage, and that there must be either a sale of so

much of the stock as is subject to the second mortgage, or the complainant's bill must be dismissed.

XIV.

This defendant is informed and believes it to be true that complainant, as stated in article 14, obtained title to the bonds sought to be enforced by the complainant by said bill of assignment of Simon Schafer, of New York; and that the complainant State of South Dakota is the absolute and uncondition- owner of said bonds, in manner and form as alleged in said bill, under legislation of the State of South Dakota.

Wherefore this defendant prays that plaintiff's bill be dismissed with costs, unless the court shall decree that all the stock subject to the second mortgage be sold for the benefit of all the holders of said second-mortgage bonds.

CHARLES SALTER, *Defendant.*
DANIEL L. RUSSELL, *Counsel.*
ALFRED RUSSELL, *Counsel.*

Endorsed: Supreme Court U. S. October term, 1901. Term No. 9 Original The State of South Dakota, complainant, *vs.* The State of North Carolina *et al.* Answer of Charles Salter, Filed April 2, 1902

49 Supreme Court of the United States.

The Replication of The State of South Dakota, Complainant, to the Answer of The State of North Carolina, Defendant.

This repliant, saving and reserving to *him*self all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that *he* will aver and prove *his* said bill to be true certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that, any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by *his* said bill *he* hath already prayed.

(Signed) JOHN L. PYLE,
Attorney General of South Dakota.

(Signed) ROBERT W. STEWART,
Solicitor for Complainant.

(Signed) WHEELER H. PECKHAM,
Of Counsel for Complainant.

Endorsed: Supreme Court U. S. October term, 1901. Term No. 11, original. The State of South Dakota, compl't, *vs.* The State of North Carolina *et al.* Replication of complainant to answer of State of North Carolina. Filed April 28th, 1902.

50 Supreme Court of the United States, October Term, 1901.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA ET AL. } No. 11, Original.

Ordered, that the testimony in this case be taken orally, in the same manner as provided for the taking of testimony in the circuit courts of the United States, sitting in equity, by rule 67 of the rules of practice in equity promulgated by this court, and that any person or persons, duly authorized by law to take testimony, agreed upon by the parties to this case, not in default for want of an answer, may take such testimony, the same as if he had been specially appointed by this court commissioner to do so, and that in default of such agreement any justice of this court may appoint a commissioner or commissioners for that purpose; that one or more persons or commissioners may be selected or appointed each to take testimony in any named locality and each to act as if he were sole commissioner; that the time to take such testimony is limited to the first day of October next, and that the same be returned to this court and filed with the clerk thereof on or before the first Monday of October, 1902.

Per MR. CHIEF JUSTICE FULLER.

May 19, 1902.

Endorsed: Supreme Court U. S., October term, 1902. Term No. 11, original, The State of South Dakota, compl't, *vs.* The State of North Carolina *et al.* Order to take testimony Filed, May 19th, 1902.

51 The Supreme Court of the United States.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES Salter, and Simon Rothschilds, Defendants. } No. —, Original.

Agreement of Counsel as to Depositions.

It is agreed that Mr. I. W. Goodner of Pierre, South Dakota, shall be appointed commissioner to take depositions in the State of South Dakota, the taking of said depositions on the part of the complainant shall commence on the 18th day of August, 1902, at the office of said I. W. Goodner at Pierre, S. D. Any party to this suit shall be entitled to take depositions before said commissioner on twenty (20) days' notice to the other party to this suit, or to their solicitors or counsel.

It is agreed that Mr. Russell Lucas of the State of New York, city of New York, shall be appointed commissioner to take depositions at the instance of either party in the said suit in the city and State of New York. Any party to this suit may take depositions before said commissioner on ten (10) days' notice to the other parties, stating time and place.

It is agreed that no deposition shall be taken by either party to this cause before the 15th day of August, 1902.

ROBERT D. GILMER,
Att'y Gen'l for North Carolina.
WHEELER H. PECKHAM,
Counsel for Complainant.
D. L. RUSSELL,
Counsel for Charles Salter.

Endorsed: Supreme Court U. S. October term 1902. Term No. 9, original. The State of South Dakota, compl't, *vs.* The State of North Carolina *et al.* Stipulation to take depositions. Filed August 8, 1902.

52 The Supreme Court of the United States.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES Salter, and Simon Rothschild, Defendants. } No. —, Original.

It is agreed that Ed. S. Battle of Wilmington N. C. shall be appointed commissioner to take depositions in the State of North Carolina.

Any party to this suit shall be entitled to take depositions before said commissioner on ten (10) days' notice to the other party to this suit, or to their solicitors or counsel.

WHEELER H. PECKHAM,
Of Counsel for Complainant.
R. D. GILMER, *Att'y Gen'l.*
JAS. E. SHEPHERD,
Of Counsel for State of North Carolina.
D. L. RUSSELL,
Of Counsel for Def't Charles Salter.

Endorsed: Supreme Court U. S. October term, 1902. Term No. 9, orig'l. The State of South Dakota, complainant, *vs.* The State of North Carolina *et al.* Stipulation to appoint E. S. Battle, commissioner to take depositions. Filed Aug. 30, 1902.

53 The Supreme Court of the United States.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES Salter, and Simon Rothschild, Defendants. } No. —, Original.

Agreement of Counsel as to Depositions.

It is agreed that Mr. I. W. Goodner of Pierre, South Dakota, shall be appointed commissioner to take depositions in the State of South Dakota, the taking of said depositions on the part of the complainant

shall commence on the 18th day of August, 1902, at the office of said I. W. Goodner at Pierre S. D. Any party to this suit shall be entitled to take depositions before said commissioner on twenty (20) days' notice to the other party to this suit, or to their solicitors or counsel.

It is agreed that Mr. Russell Lucas of the State of New York, city of New York, shall be appointed commissioner to take depositions at the instance of either party in the said suit in the city and State of New York. Any party to this suit may take depositions before said commissioner on ten (10) days' notice to the other parties, stating time and place.

It is agreed that no depositions shall be taken by either party to this cause before the 15th day of August, 1902.

ROBERT D. GILMER,
Att'y Gen'l for North Carolina.
WHEELER H. PECKHAM,
Of Counsel for Complainant.
D. L. RUSSELL,
Counsel for Charles Salter.

Endorsed: Supreme Court, U. S. October term, 1902, Term No. 9, original The State of South Dakota, compl't, *vs.* The State of North Carolina *et al.* Stipulation to take depositions. Filed Aug. 8, 1902.

54 Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing typewritten page contains a true copy of the stipulation to take depositions in the case of The State of South Dakota, compl't, *vs.* The State of North Carolina *et al.*, No. 9, orig'l, October term, 1902, as the same remains upon the files of said Supreme Court.

In testimony whereof I hereunto subscribe my name and
[SEAL.] affix the seal of said Supreme Court, at the city of Washington, this 8th day of August, A. D. 1902.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

55 In the Supreme Court of the United States, October Term 1901.

THE STATE OF SOUTH DAKOTA, Complainant, *vs.* THE STATE OF NORTH CAROLINA, Charles Salter, and Simon Rothschilds, Defendants.	No. 11, Original. In Equity.

Pursuant to the stipulation of counsel which has been certified to me by the clerk of the above-named court, and which certified stip-

ulation is hereto attached, I, I. W. Goodner, commissioner under authority thereof, and a notary public in and for the county of Hughes and State of South Dakota, on the 18th day of August, 1902, at my office on Dakota avenue, in the city of Pierre, South Dakota, proceeded to take depositions and to the examination of witnesses in the above-entitled case as follows:

Present: R. W. Stewart, Esq., attorney and counsel for the complainant, The State of South Dakota, and George Rountree, Esq., and James E. Shepherd, Esq., attorneys and counsel for the defendant, State of North Carolina; the defendant, Charles Salter, and the defendant, Simon Rothschilds, not being present either in person or by attorney or counsel.

By request of parties is is ordered that these depositions be taken by question and answer.

CHARLES N. HERREID, a witness produced on behalf of the com plainant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Stewart, of counsel for complainant, as follows:

56 Q. 1. State your name, age, residence and occupation?

Ans. Charles N. Herreid, age, 44, residence Eureka, South Dakota, occupation, attorney.

Q. 2. What official position, if any do you now occupy and hold in the State of South Dakota?

Ans. Governor of the State.

Q. 3. How long have you been governor of the State of South Dakota?

Ans. I took the oath of office and took possession of the office on January 8th, 1901. I have been governor ever since and am now the duly qualified and acting governor of the State.

Q. 4. You may state whether or not as governor of the State of South Dakota you are in possession of any papers or documents purporting to be bonds or evidences of indebtedness and purporting to have been issued and executed by The State of North Carolina, the defendant in this action?

Ans. I am.

Q. 5. Will you produce them?

Ans. I will and I do (producing certain papers).

Papers produced by the witness and by him handed to the commissioner with the request made by the witness and the counsel for the complainant that the same be marked Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 respectively, for identification.

Papers received by the commissioner and marked by him Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in accordance with the request.

Q. 6. How did you come into possession of these papers marked Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10?

Ans. They were delivered to me in the office of the attorney general of this State and in his presence by Hon. Charles H. Burke, one of the Congressmen from this State, and I received them, acting

upon the advice of the attorney general and in accordance with chapter 134 of the laws of this State for the year 1901.

57 Q. 7. For what purpose, if any, were they delivered to you by Mr. Burke?

Ans. As a gift to become the absolute property of the State.

Q. 8. What if anything did you do with them when they were delivered to you as you have testified?

Ans. I accepted them.

Q. 9. As whose property?

Ans. The property of this State.

Q. 10. For whom, if any one, did Mr. Burke purport to be acting when he delivered you these bonds as you have testified?

Ans. The owner of the bonds—one Simon Schafer.

Q. 11. Who, if you know, is now the owner and holder of these Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10?

Ans. The State of South Dakota, the complainant in this action.

Q. 12. Has any one else, save and except the State of South Dakota any right, title or interest, or ownership of any kind or character or nature in these Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10?

Ans. No, sir.

Q. 13. Has Simon Schafer and his associates or either or any of them any interest or right or ownership of any kind or nature in or to these exhibits?

Ans. No, sir.

Q. 14. State whether or not Mr. Burke ever delivered anything else to you in relation to this transaction, save and except these exhibits?

Ans. There was a letter from Mr. Schafer to Mr. Burke, with the bonds, but I don't remember seeing it at that time, or reading it.

Q. 15. Have you that letter?

Ans. I have.

Q. 16. Will you produce it?

Ans. I will.

Paper produced by the witness and handed by the witness to the commissioner, with the request of the witness and of the counsel for the complainant that the same be marked Exhibit 11, for the purpose of identification.

58 Paper received by the commissioner and marked Exhibit 11 in accordance with said request.

Counsel for complainant at this time offered in evidence Exhibit 11, and the witness and counsel for the complainant ask that Exhibit 11 be attached to and made a part of the deposition of the witness Charles N. Herreid.

Exhibit 11 received by the commissioner and attached to the deposition as requested.

Q. 17. Under and by virtue of what authority, if any, did you receive and accept, as you have testified, these Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, as the property of the State of South Dakota?

Ans. Under and by virtue of chapter 134 of the laws of South Dakota for the year 1901, by virtue of which I was directed to re-

ceive and accept the same, and acting upon the advice of the attorney general.

Paper handed by counsel for complainant to the commissioner with the request that he mark the same Exhibit 12, for identification. Paper marked Exhibit 12 by the commissioner according to said request.

Q. 18. I now hand you Exhibit 12 and ask you to state whether or not that is a copy of the law to which you refer.
Ans. Yes, sir.

Paper marked Exhibit 12, purporting to be a certified copy of chapter 134 of the laws of the State of South Dakota for the year 1901, with the seal of the State of South Dakota affixed thereto now offered in evidence by counsel for the complainant and the commissioner is requested by the witness and the counsel for the
59 complainant to receive the same and attach it to and make it a part of the deposition of the witness Charles N. Herreid.

Exhibit 12 received by the commissioner and attached to the deposition as requested.

Exhibit 1, purporting to be bond No. 3807 and purporting to have been issued July 1, 1867 by the defendant The State of North Carolina to bearer in the sum of one thousand dollars ($1000.00) due on the 1st day of July, 1897, together with fifty-eight interest coupons attached, each in the sum of thirty ($30.00) — and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond, and

"Exhibit 2," purporting to be bond No. 3815, and purporting to have been issued July 1st, 1867, by the State of North Carolina to bearer in the sum of one thousand ($1,000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond, and "Exhibit 3," purporting to be bond No. 3860, and purporting to have been issued July 1st, 1867, by the defendant, The State of North Carolina, to bearer in the sum of one thousand ($1000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons, attached, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond, and

60 "Exhibit 4," purporting to be bond No. 3861, and purporting to have been issued July 1st, 1867, by the defendant, The State of North Carolina, to bearer, in the sum of one thousand ($1000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons attached, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond, and

"Exhibit 5," purporting to be bond No. 4214, and purporting to have been issued July 1st, 1867, by the State of North Carolina, to

bearer in the sum of one thousand ($1000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons attached, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond, and

"Exhibit 6," purporting to be bond No. 4240 and purporting to have been issued July 1st, 1867, by the State of North Carolina to bearer in the sum of one thousand ($1000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons attached, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond, and

"Exhibit 7," purporting to be bond No. 4246, and purporting to have been issued July 1st, 1867, by the State of North Carolina, to bearer in the sum of one thousand ($1000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons attached, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-
annual interest due on the bond from the 1st day of January,
61 1869, to the maturity of the bond, and

"Exhibit 8," purporting to be bond No. 4413, and purporting to have been issued July 1st, 1867, by the State of North Carolina, to bearer in the sum of one thousand ($1000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons attached, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond, and

"Exhibit 9," purporting to be bond No. 4415, and purporting to have been issued July 1st, 1867, by the State of North Carolina to bearer in the sum of one thousand ($1000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons attached, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond, and

"Exhibit 10," purporting to be bond No. 4416, and purporting to have been issued July 1st, 1867, by the State of North Carolina, to bearer in the sum of one thousand ($1,000.00) dollars, due July 1st, 1897, together with fifty-eight interest coupons attached, each in the sum of thirty ($30.00) dollars, and purporting to represent the semi-annual interest due on the bond from the 1st day of January, 1869, to the maturity of the bond,

Were now offered in evidence by counsel for the complainant and the commissioner was requested by the witness and counsel for complainant to receive the same and attach the same to and make the
same a part of the deposition of the witness Charles N. Herreid.
62 Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 were received by the commissioner and were attached to the deposition of Charles N. Herreid by the commissioner as requested.

It is hereby stipulated and agreed by and between the parties to this action acting herein by and through their respective counsel and attorneys that the original bonds and coupons marked Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, may be withdrawn and that certified

copies of the same made and certified by the commissioner may be substituted in place thereof and that said copies when so made may be attached to this deposition in place of said originals.

(Signed) JAS. E. SHEPHERD.
(Signed) GEORGE ROUNTREE.
(Signed) ROBERT W. STEWART.

Q. 19. Have these bonds and coupons Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 been paid?

Ans. No.

Q. 20. Has any part of them been paid?

Ans. No.

Q. 21. How much is now due upon these bonds and coupons from the defendant The State of North Carolina to the complainant The State of South Dakota?

Ans. From the computation just now made by counsel in this case it appears that there is about $50,819.53 due.

Cross-examination:

The counsel for the State of North Carolina without waiving its protest heretofore made against the jurisdiction of the court, proceeded to cross-examine the witness, as follows:

63 Q. 1. Will you please give the date of the delivery of the bonds as testified by you, and state also, who were present at the time of said delivery?

Ans. On or about September 21st, 1901. There were present Congressman Burke, Attorney General Pyle and his associate counsel, Col. R. W. Stewart, and myself.

Q. 2. Had you heard anything in regard to these bonds before that date and from what source?

Ans. Yes, from Congressman Burke and Attorney General Pyle.

Q. 3. Will you be kind enough to state what was said to you by Congressman Burke and also the attorney general in reference to the matter?

Ans. That there was a certain party who owned and held certain bonds issued by the State of North Carolina that he desired to donate to the State of South Dakota with the suggestion or request that the proceeds be used for the benefit of the State university.

Q. 4. Was any reference made during that interview with Mr. Burke—that is, the interview several weeks prior to the delivery of the bonds—in reference to the employment of counsel and the bringing of suit, and if so, what was it?

Ans. I don't remember, but I think he said that he would or had talked the matter over with the attorney general.

Q. 5. Then at the time of the delivery of these bonds you say that Col. Stewart was the associate of the attorney general in regard to their collection?

Ans. At that time I understood that it might be necessary to bring an action and that Col. Stewart had been associated with the attorney general in the matter.

Q. 6. Had Col. Stewart been spoken to or employed by you at that time?

Ans. No, sir.

64 Q. 7. Or had you authorized at that time the employment of any counsel—that is to say, before the bonds had been assigned to you?

Ans. I never understood and I don't understand now that I had any authority or anything to do with the collection of the bonds, that being the duty of the attorney general.

Q. 8. Where is the attorney general now?

Ans. He is dead.

Q. 9. What was done by you after you accepted the bonds—what action was taken by you?

Ans. I left them in the office of the attorney general.

Q. 10. Why were they left with the attorney general?

Ans. For collection.

Q. 11. Had you before delivering them to the attorney general for collection or at any other time made any demand upon the State of North Carolina for their payment, or attempted to negotiate with the said State in reference to their payment, or did you notify or cause to be notified the said State of the acquisition by the State of South Dakota of the said bonds?

Ans. Whatever has been done has been done by the legal department of the State.

Q. —. Within your own knowledge has any one in behalf of the State before the beginning of this suit made any such demand? Or attempt to negotiate? Or notified the State of North Carolina of the acquisition of the said bonds?

Ans. I don't know. I was called by Mr. Pyle into his office to receive these bonds, and assumed that he would do whatever was necessary to do in the premises or with reference to the matter.

Q. 13. Did you know anything of the passage of this act, chapter 134 of the Laws of 1901, before the delivery of these bonds?

Ans. I recall the passage of this particular act, that is all.

65 Q. 14. Were you consulted in regard to the introduction or passage of the act?

Ans. No; the bill may have been mentioned or talked of in my presence, like any other pending legislation. I remember it was my surmise at the time when I signed the bill that it was intended to furnish a way for funds for a new capitol building.

Q. 15. Were these bonds spoken of at the time you heard this bill discussed?

Ans. I never heard of the bonds until they were spoken of by Mr. Pyle and Mr. Burke as I have testified heretofore.

Q. 16. Can you tell me by reference to the Senate Journal when this bill was introduced, and by whom?

Ans. From the book which you have shown me, which is the Journal of the Senate for 1901, I find on page 1037, under date of March 1st, 1901, that senate bill No. 224 was introduced and had its first reading on that day, said bill becoming chapter 134 of the

laws of that year, and that it was introduced by the committee on State affairs.

Q. 17. Who was on the committee of State affairs of the senate.

Ans. I don't remember. By reference to the Senate Journal, page 109 I find that the senate committee on State affairs consisted of H. T. Cooper, chairman; Joseph Leech, A. F. Le Claire, J. F. Whitlock, George H. Few, R. W. Stewart, Pierce Cahill, Peter A. Overseth and Fred. S. Rowe.

Q. 18. The R. W. Stewart mentioned is one of the counsel for the complainant in this suit, is he not?

Ans. Yes.

Q. 19. Do you know the transferer or assignor of these bonds, Mr. Schafer?

Ans. No, sir, I do not.

Q. 20. Do you know whether he has any financial interest in the State of South Dakota, or any other interest?

66 Ans. I do not know.

Q. 21. Do you know whether he has lived or been in the State of South Dakota?

Ans. I do not.

Q. 22. I understood you to say that when you left the bonds with Mr. Pyle that there would probably be a suit necessary to collect them; is that so?

Ans. What I mean to be understood as saying, is this: That I understood from Mr. Pyle that there was a dispute about the amount due upon said bonds, and that it might require an action to settle the question of the amount due.

Q. 23. Did it not occur to you that that dispute, if any, might be settled by negotiation?

Ans. I took it for granted that the legal department would attend to the matter and do whatever was necessary. I did not consider that it was any of my individual work, at all.

Q. 24. What provision was made for the payment of the costs of the suit by the State of South Dakota?

Ans. I don't know any more about that than any other costs incurred by the attorney general. I presume they are paid out of his expense account, like all other matters in his department.

Q. 25. Then you do not know whether there was any special agreement or understanding between the representatives of the State of South Dakota and any other person or persons with reference to the payment of the costs of this suit?

Ans. I do not.

Q. 26. Was there not an agreement or understanding that this money, if collected, was to be devoted to the State University of South Dakota?

Ans. No, sir.

Q. 27. Have you received any other donation under this

67 act of the legislature to which you refer?

Ans. Well, I received a donation of two hundred dollars and which I used to buy books for the new normal school at Aber-

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

deen, but I don't consider that it was strictly under the provisions of this act.

CHARLES N. HERRIED.

(Here follows Exhibit No. 1, being reproduction of bond and coupons.)

68 UNITED STATES OF AMERICA, } ss:
State of South Dakota, County of Hughes, }

I, I. W. Goodner, commissioner appointed to take testimony in the case of State of South Dakota *vs.* State of North Carolina, *et al.*, and a notary public within and for the county of Hughes, State of South Dakota, do hereby certify that I have carefully compared the annexed and foregoing with "Exhibit 1" as offered in evidence on behalf of the complainant at the taking of the deposition of Charles N. Herreid in said case on the 18th day of August, 1902, and that the same is a true and correct copy thereof.

In witness whereof, I hereunto set my hand and seal as notary public, this 18th day of August, 1902.

I. W. GOODNER,
Commissioner and Notary Public, Hughes County, South Dakota.

(Here followed Exhibits Nos. 2 to 10, inclusive, being reproductions of bonds and coupons similar to Exhibit No. 1, which are omitted in printing this record per stipulation of counsel.)

69 EXHIBIT No. 11. I. W. Goodner, Commissioner.

Page 1.

OFFICE OF SCHAFER BROTHERS, No. 35 WALL STREET,
NEW YORK, *September 10th*, 1901.

P. O. Box 2217.

Hon. Charles H. Burke.

DEAR SIR: The undersigned, one of the members of the firm of Schafer Bros., has decided, after consultation with the other holders of the second-mortgage bonds issued by the State of North Carolina, to donate ten of these bonds to the State of South Dakota.

The holders of these bonds have waited for some thirty years in the hope that the State of North Carolina would realize the justice of their claims for the payment of these bonds.

The bonds are all now about due, beside, of course, the coupons, which amount to some one hundred and seventy per cent. of the face of the bond.

The holders of these bonds have been advised that they cannot maintain a suit against the State of North Carolina on these bonds, but that such a suit can be maintained by a foreign State or by one of the United States.

The owners of these bonds are mostly, if not entirely, persons

who liberally give charity, to the needy, the deserving and the unfortunate.

These bonds can be used to great advantage by States or foreign governments; and the majority owners—

70 EXHIBIT No. 11. I. W. Goodner, Commissioner.

Page 2.

OFFICE OF SCHAFER BROTHERS,
No. 35 WALL STREET, NEW YORK.

P. O. box 2217.

would prefer to use them in this way rather than take the trifle which is offered by the debtor.

If your State should succeed in collecting these bonds it would be the inclination of the owners of a majority of the total issue now outstanding to make additional donations to such governments as may be able to collect from the repudiating State, rather than accept the small pittance offered in settlement.

The donors of these ten bonds would be pleased if the legislature of South Dakota should apply the proceeds of these bonds to the State university or to some of its asylums or other charities.

Very respectfully,

(Signed) SIMON SCHAFER.

71 EXHIBIT 12. I. W. Goodner, Commissioner.

OFFICE OF THE SECRETARY OF STATE,
PIERRE, SOUTH DAKOTA.

CHAPTER 134. [SEAL.]

(S. B. 224.)

Providing for the Acceptance of Grants by the State.

An act to require the acceptance and collection of grants, devises, bequests, donations, and assignments to the State of South Dakota.

Be it enacted by the legislature of the State of South Dakota:

SEC. 1. Governor to accept.—That whenever any grant, devise, bequest, donation or gift or assignment of money, bonds or choses in action or of any property, real or personal, shall be made to this State, the governor is hereby directed to receive and accept the same, so that the right and title to the same shall pass to this State; and all such bonds, notes or choses in action, or the proceeds thereof when collected, and all other property or thing of value, so received by the State as aforesaid shall be reported by the governor to the legislature, to the end that the same may be covered into the public treasury or appropriated to the State university or to the public schools or to State charities as may be hereafter directed by law.

SEC. 2. Duty of attorney general.—Whenever it shall be necessary to protect or assert the right or title of the State to any prop-
72 erty so received or derived as aforesaid, or to collect or reduce into possession any bond, note, bill or chose in action, the attorney general is directed to take the necessary and proper proceedings and to bring suit in the name of the State in any court of competent jurisdiction, State or Federal, and to prosecute all such suits, and is authorized to employ counsel to be associated with him in such suits or actions, who, with him, shall fully represent the State and shall be entitled to reasonable compensation out of the recoveries and collections in such suits and actions.

Approved March 11, 1901.

73 STATE OF SOUTH DAKOTA, }
Department of State. }

I, O. G. Berg, secretary of the State of South Dakota, hereby certify that I have carefully compared the annexed and foregoing with the original chapter 134 of the Laws of the State of South Dakota, passed and enacted by the legislature of the State of South Dakota at its regular biennial session in 1901, and approved by the governor of the State on March 11th, 1901, and that the same is a true and correct copy thereof.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the great seal of the State, this 14th day of August, A. D. 1902.

O. C. BERG,
Secretary of State,
By E. N. GRAVES,
Assistant Secretary of State.

74 The foregoing deposition of Charles N. Herreid, was sworn to and subscribed before me at the time and place mentioned above.

IVAN W. GOODNER,
[SEAL.] *Commissioner.*

UNITED STATES OF AMERICA, }
State of South Dakota, County of Hughes, } *ss:*

I, Ivan W. Goodner, duly appointed by stipulation and agreement of counsel, commissioner to take depositions in the State of South Dakota, in the above-entitled case, and being also a notary public within and for the county of Hughes, State of South Dakota, hereby certify that the above-named witness, Charles N. Herreid, was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that his deposition was reduced to writing by myself in the presence of the said witness, and in the presence of such of the parties and counsel as attended, and when completed was read over to said witness and subscribed by him in my presence, and in the presence of such of the parties and counsel as attended. That said

deposition was taken, pursuant to the annexed stipulation, at the office of Ivan W. Goodner, on Dakota avenue, in the city of Pierre, South Dakota, beginning on the 18th day of August, 1902, and continuing until finished on that day, as set forth. That the parties were represented at the taking of said deposition by their respective counsel, as set forth. That the several exhibits recited were offered in evidence and marked as specially noted in the foregoing deposition, and that the stipulation of counsel as to the substitution of certified copies was made during the taking of the deposition in my presence, as set forth in the foregoing deposition, and that I
75 am not counsel or relative of either party, or otherwise interested in the event of this suit.

IVAN W. GOODNER,
[SEAL.] *Commissioner and Notary Public in and for Hughes County, South Dakota.*

Fees—Notary.

407 folios at 20c..... $81.40

Paid by complainant,
IVAN W. GOODNER, *Commissioner.*

Endorsed on envelope: To the clerk of the United States Supreme Court, Washington, D. C. In the Supreme Court of the United States, The State of South Dakota, complainant, *vs.* The State of North Carolina, Charles Salter and Simon Rothschilds, defendants. Deposition of Charles N. Herreid, a witness on behalf of the complainant in the above-entitled cause, taken before me and by me sealed and transmitted to the clerk of the above-named court. Ivan W. Goodner, commissioner, and notary public in & for Hughes county, South Dakota.

Office Supreme Court of U. S. Received Aug. 22, 1902. Opened in open court by order of court and filed the 15th of December 1902. Jas. H. McKenney, clerk, U. S. Sup. Ct.

Endorsed: Supreme Court U. S. October term, 1902. Term No. 9, original. The State of South Dakota, complainant, *vs.* The State of North Carolina *et al.* Deposition of Charles N. Herreid a witness for the complainant. Filed Dec. 15th, 1902.

76 Supreme Court of the United States, October Term, 1901.

STATE OF SOUTH DAKOTA, Complainant, *against* THE STATE OF NORTH CAROLINA, CHARLES SALTER, and Simon Rothschild, Defendants.	No. 11, Original. In Equity.

Pursuant to the stipulation of counsel which has been certified to me by the clerk of the above-named court, and which certified stipulation is hereto attached, I, Russell Lucas, commissioner under authority thereof, on the 8th day of September, 1902, at the office of Addison G. Ricaud, Esq., No. 25 Broad street in the city of New

York, proceeded to take depositions and to the examination of the witnesses in the above-entitled case as follows:

Present: Wheeler H. Peckham, Esq., counsel for complainant; James H. Merriman, Esq., George Rountree, Esq., and James E. *Shepherd, Esq., counsel for defendant State of North Carolina.*

It is stipulated that the testimony now to be taken shall be taken by a stenographer, written out by him and subscribed by the witness.

77 WILLIAM HENRY GIBSON, a witness produced on behalf of the complainant, being first duly sworn, deposes and says in answer to the interrogatories propounded to him by Mr. Peckham, of counsel for complainant, as follows:

Q. Where do you reside?

A. I reside in 39 Temple street, Long Island City, borough of Queens, New York.

Q. How long have you resided there?

A. 27 years.

Q. Do you know Simon Rothschild?

A. Yes, sir.

Q. Where does he live?

A. He lives at present at the Hotel Netherlands, 5th avenue.

Q. In what city, please?

A. New York city.

Q. Do you also know Charles Salter?

A. Yes, sir.

Q. Where does he reside?

A. Flatbush, Long Island.

Q. How long has Mr. Salter resided in Flatbush, Long Island?

A. Well, it is over ten years; I don't know how much more.

Q. This place that you designate as Flatbush, can you tell me within what city that is?

A. Well, it is in Brooklyn. It is part of the city of Brooklyn, I believe, now.

Q. Is there any city of Brooklyn now?

A. No, sir; it is a part of the Greater New York, I should state.

Q. Do you know whether he is a citizen of the State of New York?

A. Yes, sir.

Q. Is he or is he not?

A. He is a citizen.

78 Q. Natural born or naturalized?

A. That I can't tell you, sir.

Q. Then how do you know that he is a citizen?

A. Well, I have known him a great many years, and from what he has informed me, he is a citizen.

Q. Have you ever known him living anywhere else than in the city of New York?

A. No sir.

Q. How about Simon Rothschild; do you know whether he is a citizen?

A. Yes.

Q. And of what?

A. Well, the only knowledge that I have is what he has informed me. I have known him for about 35 years.

Q. Where, in the city of New York?

A. Here.

Q. Do you know whether Mr. Salter and Mr. Rothschild or either of them are the owners of any bonds of the State of North Carolina?

A. Yes sir.

Q. What do you know about it? Tell us.

A. I know from the holders of the different kinds of bonds, I know that I have had some of them in my possession.

Q. Which owns which?

A. Mr. Rothschild owns some of the first and some of the seconds, and Mr. Salter owns some of the seconds.

Q. When you say "some," can you give us any idea how many?

A. No; I could not. Of course I can guess about.

Q. I don't want any guessing. How do you know Mr. Salter owns any?

A. I do.

Q How do you know it, I say?

A. Because I have had them in my possession, and have examined them.

79 Q. Which did you say that he owned?

A. The seconds.

Q. And as for Mr. Rothschild, which does he own?

A. He owns part of each—some first and some seconds.

Q. Do you know anything about the holders, who are the holders, or whether many or few people, of these second-mortgage bonds of the State of North Carolina?

A. That I do not know; they are scattered.

Q. Do you know anything about Mr. Rothschild, after being served with a copy of the bill in this case, calling at the First national bank in the city of New York with reference to the first-mortgage bonds?

A. I do.

Q. How do you know it?

A. I called there with him myself.

Q. Just state what occurred there?

Counsel for defendant State of North Carolina object as to what occurred between Mr. Rothschild and the president of the bank.

A. We went to the bank. We inquired for the president and they stated he was not in. We were referred to another officer, and Mr. Rothschild handed him the bill of equity that he had received, and he stated to him that he thought he ought to notify the other bondholders; that he supposed they knew all about it because it had been published in all the newspapers in North Carolina and various other papers throughout the country, and the gentlemen replied the

only interest they had in the matter was that they were acting as agents for the State and paying the coupons, but that he would read the paper over and take the matter into consideration.

Cross-examination by Mr. MERRIMAN:

Q. Do you sustain any relation to Mr. Rothschild?

A. No sir.

Q. You are not his agent?

A. No sir.

Q. Don't do any kind of business for him?

A. I am employed by a firm that does his business—that makes his investments.

Q. What firm is that?

A. Schafer Bros.

Q. What Schafer is that?

A. Well, the present one, the only one living, now, of the firm, is Samuel M. Schafer. The other member died about two or three weeks ago.

Q. Samuel M. Schafer, the man that is named in this bill?

A. I don't know anything about the bill, what bill you refer to.

Q. You said you saw that bill in equity, didn't you?

A. That I don't know; I didn't read it.

Q. Do you know anything of Mr. Schafer getting some bonds of the State of South Dakota?

A. No sir.

Q. You never heard of that?

A. No sir.

Q. Where does Mr. Schafer live?

A. The one that is living?

Q. Yes sir.

A. He lives at 52 West 46th street.

Q. What does he do?

A. He is a banker and broker.

Q. And you stay in his house?

A. Did I stay in his house?

Q. Yes; you are in his house, are you not; don't you assist him in some way?

A. Yes sir; I am his confidential clerk.

Q. You are his confidential clerk. Now, if you are his confidential clerk, if he had given some bonds to South Dakota you would have known it?

A. Not necessarily.

Q. Don't he confide to you everything he does about his business?

A. No sir.

Q. What do you mean by being his confidential clerk?

A. In regard to a customer that comes in there to buy and sell stocks, he asks me what I think of it, and I generally decide whether we shall do it or not, and in regard to investments and such things.

Q. He didn't consult you whether he should give some bonds to the State of South Dakota?

A. No sir.
Q. How long have you been in this man's service?
A. 37 years.
Q. Did you ever hear Mr. Schafer talking about this suit between the State of South Dakota and North Carolina?
A. Maybe I might have overheard some conversation. I can't say that I know anything about it.
Q. Whom did you hear talking about it?
A. I have heard Mr. Simon Schafer, the one that is dead, speak about it.
82 Q. You didn't hear the one that is living talk about it?
A. I may have overheard some conversation with his brother, and I can't say what it was.
Q. What did you hear the man who is dead say about this suit between South Dakota and the State of North Carolina?

Counsel for complainant objects to the question.

A. I didn't hear him say anything.
Q. Didn't you say that you had heard them conversing about this suit?
A. Yes; he told me about a newspaper article.
Q. Who did, the dead man or the living one?
A. The one that is dead, and asked me if I knew anything about it. I told him No, I did not know anything about it. It was something in regard to the appointment of a commissioner or something, I didn't know just what it was. I guess it was this thing you refer to.
Q. Did you ever see R. W. Stewart, of South Dakota?
A. No sir, not to my recollection.
Q. Did you ever see a gentleman by the name of Burke?
A. No sir.
Q. Of that State?
A. No sir.
Q. Do you remember to have seen any person from the State of North Carolina at your place of business talking about this matter?
A. Yes sir.
Q. Who was he?
A. Governor Russell and Mr. Ricaud.
Q. When was that?
83 A. Governor Russell was about a week ago; Mr. Ricaud was last Saturday.
Q. Was that the first time you ever saw them there?
A. No sir.
Q. I want you to tell when you first saw them there, Mr. Gibson, if you please?
A. I can't recollect the first time I saw them.
Q. Try and recollect, if you can, when was the first time you ever saw Governor Russell at that place?
A. I am trying to think—I don't know.
Q. You can't fix it at all?
A. It might be a year ago or two years ago; I can't recollect.
Q. It was more than a year ago, wasn't it?

A. I don't think so.
Q. Tell us, as near as you can?
A. It might be between a year and two years.
Q. It might be between a year and two years?
A. Yes sir.
Q. What was Mr. Russell there for?
A. The last time?
Q. No; the first time?
A. I don't know.
Q. Didn't you hear a conversation between him and Mr. Schafer at that time?
A. No sir.
Q. Did they converse together at that time?
A. Yes sir.
Q. In your presence?
A. No sir.
Q. In your banking-house?
A. Yes sir.
Q. How long was the Governor there?
A. I don't know.
84 Q. Did he have any private banking business with your concern?
A. No sir; not to my knowledge.
Q. That was some time before this suit was brought, wasn't it?
A. Yes sir.
Q. About how long would you say?
A. Well, you will have to give me the date of the suit.
Q. It was after October, 1901. Were they talking about bringing this suit at that time?
A. I don't know sir; I didn't overhear the conversation.
Q. Who was with the governor from North Carolina at that time?
A. I don't think anybody was with him.
Q. Did Mr. Schafer tell you of the conversation he had with Governor Russell?
A. No sir.
Q. Never told you anything about it at all?
A. No sir.
Q. Did you hear Mr. Schafer say anything about collecting his bonds against North Carolina after Governor Russell was there?
A. No sir.
Q. Did you hear either one of the Schafers speak of it?
A. No sir.
Q. Didn't you hear them talk about bringing a suit against the State to collect these bonds at any time?
A. A long time ago.
Q. Now, when was that; let us get at that?
A. It must be about 20 years ago.
85 Q. Never since that time?
A. Between 20 years and never is quite a time.
Q. Do you know where Mr. Schafer got those bonds?

A. Mr. Schafer told me that he invested in those bonds when he was a young man. He made his first investment in them; and he said that he thought that they were a good investment, and he bought them for that purpose.

Q. Which one of the Schafers told you that?

A. Mr. Simon Schafer, the one that is dead. And later on he bought some more of them, and that is how he came to speak to me about bringing a suit. He said that he thought he was entitled to his money, and he was going to try and get it.

Q. Is Mr. Rothschild a native of America, or is he a foreigner?

A. I think he was born abroad, as far as he has told me, but I wouldn't swear to it, but I think he is born abroad; I think he was born in Germany.

Q. You have got no personal knowledge of his being a citizen of this country, have you?

A. No sir; only what he has informed me from conversation I have had with him a good many years about voting for different people.

Q. Did you know of Mr. Schafer, or either one of them employing any counsel in North Carolina about this matter?

A. No sir.

Q. Did you never hear that they employed Mr. Busbee?

A. No sir.

Q. Do you know anything about the petition that they pre-
86 ferred to the General Assembly of North Carolina about these bonds, in 1901?

A. No sir.

Q. Did you never hear about that?

A. No sir.

Q. Did you never see that petition?

A. No sir.

Q. Well, the Schafers don't seem to have put much confidence in their confidential clerk; they didn't let you know about these things?

A. That is his private matter. I am not his confidential clerk in private matters.

Q. Only in public matters?

A. Only in regard to the firm—the business of the firm.

Q. Did the firm own these bonds, or did just Mr. Simon Schafer own them?

A. Mr. Simon Schafer owned them.

Q. Individually?

A. Yes sir.

Q. And he is dead?

A. Yes sir.

Q. When did he die?

A. About three weeks ago.

Q. Have you any particular business relations with Mr. Salter?

A. You mean personally?

Q. In any way; any business relations of any kind with Mr. Salter?

A. The only relations we ever did have, I have known him for a good many years, and we were interested—some of our customers—in different things he was interested in, and he used to call in quite often to consult in regard to these various enterprises.

Q. What various enterprises are you talking about?

A. Well, in regard to some mining stocks that he was in, and also in regard to these North Carolina bonds.

87 Q. They talked about those things often, you say?

A. He used to come in quite often, yes sir, in regard to these things, principally about his mining stocks. There was some companies there that we were interested in; there was some litigation about. He used to ask me about it.

Q. You also said he talked about the North Carolina bonds that were held——

A. Yes sir; he told me he held these bonds.

Q. Did you hear Mr. Schafer and Salter talking together about their bonds against the State of North Carolina?

A. Yes sir; I heard them condoling each other and said they would probably get their money some day.

Q. When was that?

A. That was in our office.

Q. When?

A. Oh, six years ago.

Q. Any time since that?

A. Yes, about two years ago he called in and wanted to know if there was anything new in regard to it, and I believe Mr. Schafer told him nothing new yet.

Q. Nothing new yet. Didn't he tell him there would be something new pretty quick?

A. Not that I heard.

Q. You didn't know what he meant by saying that there was nothing new yet?

A. He didn't get his money yet.

Q. Didn't he tell him he was still trying to get it?

A. Yes sir.

Q. What did Salter say to that?

A. He said it was about time, he said. He said he held the bonds for thirty years and he was getting tired.

88 Q. Did they sustain any relation to each other at all in a business way, Salter and Mr. Schafer?

A. No sir; they might pos-ibly have had one transaction in all that time, or something of that kind.

Q. Was Salter one of his customers?

A. No sir; he was not a customer.

Q. Who is Salter?

A. He is retired. He speculates in mining stocks and such things like that. I had made his acquaintance by being a member of the Consolidated exchange and he was interested in some mining stock that some of our customers were interested in, and we used to confer about it.

Q. What do you mean by saying that he had retired?

A. He is not in any active business.
Q. How long since?
A. A good many years. As long as I have known him.
Q. Is Mr. Salter an old man?
A. Yes sir.
Q. He is a native of this country, isn't he?
A. I can't tell you that.
Q. Can't you tell whether he is a German, or——
A. I think he is a native. I can't say positively, though.
Q. You said that you had had these bonds in your possession; what did you mean by that?
A. Bonds that belonged——
Q. Belonged to Mr. Rothschild and Salter?
A. Mr. Rothschild's bonds we bought them and Mr. Salter's bonds he brought them into the office one day for me to examine. You see, when we buy bonds, Mr. Schafer used to hand them over to me to sort them, the various kinds; some were special tax and
89 some were endorsed, &c.
Q. Do you know whether or not Mr. Schafer—either one of the Schafers—or Mr. Salter and the Schafers together, or separately, consulted counsel about collecting these bonds; and if so, when?
A. I do not.
Q. Who is the counsel of the Schafer bank?
A. Hoadley, Lauterbach & Johnson.
Q. Do you know of their ever consulting Mr. Peckham about this suit?
A. I do not.
Q. Never heard them say so?
A. Never heard them mention Mr. Peckham's name.
Q. Neither of them?
A. No sir.
Q. Did you ever hear Mr. Salter mention his name?
A. No sir.
Q. Did you ever see Senator Butler of North Carolina there?
A. I don't know him. Never heard of him.
Q. You never saw Mr. Burke of South Dakota there?
A. No sir.
Q. You never heard of him?
A. No sir.
Q. How long have you been confidential clerk of this banking concern of Schafer?
A. I have been employed by them 37 years. I have been their confidential clerk about 25 years.
Q. And yet you know nothing more at all about this controversy between South Dakota and North Carolina than you have stated?
A. No sir; that was their private business. I had nothing at all to do with it.
90 Q. What was their private business?
A. Mr. Simon Schafer. When I say confidential clerk I am confidential clerk for the firm, not in their private capacity.

Q. They owned these bonds as a firm, didn't they?
A. No, sir; Simon Schafer owned these bonds.
Q. The firm had nothing to do with it at all?
A. That I can't say. They may have had an interest in it, but it was, I understand, private property of Simon Schaeffer.
Q. Still, the other Schafer may have had some interest?
A. Yes, sir; he may have.
Q. Why do you say that?
A. Because there are things that they may have interest in; for instance, they may have been in their private name and still have an interest in it. They may have a certain amount of money invested in it, for all I know.
Q. Was that usual between these two men?
A. Yes, sir.
Q. That was usual?
A. Yes, sir; that was usual.
Q. What kin are they; were they brothers?
A. Yes, sir; brothers.
Q. And it was usual when one purchased bonds or securities of any kind that the other was some way interested in them?
A. Yes, sir; for instance, they buy a piece of real estate and put it in one name although they had an agreement on the books that they had equal shares in it.
Q. That was pretty nearly the universal case between them?
A. Yes, sir.

91 Q. Mr. Gibson, I will ask you again, if you haven't heard these two gentlemen, S. M. Schafer and S. Schafer, speak of Mr. F. H. Busbee of North Carolina as their attorney in respect of these bonds?
A. No sir; I have not.
Q. Did you ever see Mr. Busbee there?
A. No sir; not to my knowledge. He might have been there and I not know him.
Q. You don't know him?
A. No sir; I don't know him.
Q. Was this banking-house of the Schafers a partnership?
A. Yes sir.
Q. It wasn't an incorporated company?
A. No sir; a partnership—two brothers.
Q. What was the style of the concern?
A. Schafer Bros.
Q. How long has that concern been doing business under that style?
A. About 40 years—42 years.
Q. All the time in this city?
A. Yes sir.
Q. What race of people do they belong to; the Hebrew?
A. Hebrew race, yes sir.
Q. They are citizens of New York?
A. Yes sir.

Q. Did this firm of Schafer Bros., or either of the firm, individually, ever do any business in South Dakota?
A. Not to my knowledge.
Q. Did they ever live there?
A. Not to my knowledge.
Q. Did you ever know one of them to go there?
A. No sir.
Q. Do you know whether they had any kinfolks there?
A. Not to my knowledge.

92 Q. Did the firm of Schafer Bros., or either of the firm, have any property in South Dakota that you knew of?
A. No sir.

Q. Did you ever know of either of these gentlemen of Schafer Bros. donating bonds to any other State except South Dakota?
A. I never heard of them donating any bonds to anybody.
Q. You did hear that they donated some to South Dakota, didn't you?
A. I did not.
Q. You never did hear of that before?
A. No sir.
Q. Did they sell any to South Dakota?
A. Not to my knowledge.
Q. When did you first hear that South Dakota had any of these bonds that the Schafers used to own?
A. About three or four months ago there was an article in the paper, I think it was the Evening Post. Mr. Schafer stated in regard to the appointment of something in—I don't know what it was—in the court, and he asked me what I thought about it. I think it was the appointment of this commission. Mr. Simon Schafer said there was a suit brought by the State of South Dakota and they had some of these bonds that he spoke about, and asked me what I knew about it. I told him I didn't know anything about it. I didn't pay much attention to it, and it didn't impress it upon my mind at that time.
Q. Didn't he say that if that suit was successful he would get his money on the bonds.
A. That he didn't say.
Q. He didn't say that?
A. No sir.

93 Q. You have told everything you know about this, have you, Mr. Gibson?
A. Yes sir.

(By Mr. PECKHAM:)

Q. Did you ever see Mr. Rothschild vote in the State of New York?
A. No sir.
Q. Where is Mr. Schafer now?
A. He is over in the office.
Q. Is he sick?
A. No sir.

Q. What is his age?
A. About 62 or 63.
Q. There is nothing to prevent his being here to be examined, is there?
A. No sir; not that I know of.
Q. Where is Mr. Salter?
A. I don't know.
Q. When did you see him last?
A. About two weeks ago, or three; about two or three weeks ago.
Q. What is his age?
A. He is about the same—over seventy, I guess.
Q. Is he in good health?
A. Then in good health.
Q. There is nothing to prevent his being here to be examined, that you know of?
A. Not that I know of.

Counsel on behalf of State of North Carolina request that the two witnesses, Mr. Samuel M. Schafer and Charles Salter, who were to be examined under the notice under which this deposition is taken, be tendered for cross-examination by counsel for the State of North Carolina.

Counsel for State of South Dakota remarks that he is not in possession of either of the gentlemen referred to, and consequently cannot tender them, but that he has no objection to counsel for the State of North Carolina securing the attendance of those gentlemen and examining them to their satisfaction.

94

WILLIAM H. GIBSON.

Subscribed and sworn to before me this 10th day of September, 1902.

RUSSELL LUCAS,
Commissioner.

SIMON ROTHSCHILD, a witness produced on behalf of the complainant, being first duly sworn, deposes and says in answer to the interrogatories propounded to him by Mr. Peckham, of counsel for complainant, as follows:

Q. You are one of the defendants in the suit in the Supreme Court of the United States, where The State of South Dakota is complainant and The State of North Carolina and others are defendants, are you not?
A. I am.
Q. And you were served with process and bill?
A. Yes sir.
Q. Will you tell us whether you are a citizen of the State of New York, or not?
A. I am a citizen over forty years.
Q. Naturalized or natural born?
A. Yes sir; naturalized.

Q. Do you own some of the first-mortgage bonds of the State of North Carolina?

A. Yes.

Q. When you call them first mortgage, you mean first
95 mortgage on certain stock?

A. I own some of the six per cent. bonds.

Q. About how many, approximately?

A. Only a few.

Q. Did you own them at the time of the commencement of this suit?

A. Oh, I owned them for God knows how long.

Q. For a perior prior to the commencement of this suit; for more then six years, say?

A. More than 15 years I think. I don't know how long. Ever so many years.

Cross-examination by Mr. MERRIMAN:

Q. What amount of bonds do you own?

A. I own where those ten shares are on. Of those bonds I own sixteen.

Q. Of what denomination?

A. A thousand dollars each. I think they are a thousand dollars each.

Q. Do you know whether they are the first or the second?

A. Well, those are those bonds where the ten shares of stock is onto them. I don't know what you call them.

Q. Do you mean to say that the shares of stock are attached to the bonds?

A. No; I think they are stamped on them, if I am not mistaken.

Q. Did you ever see a certificate of stock in the North Carolina Railroad Company?

A. I only seen those bonds which are stamped on with those ten shares of stock; where they say, "The State of North Carolina guarantee" on those bonds—those ten shares of stock.

Q. Do you know the date of your bonds?

A. No sir; I do not.

96 Q. Suppose you look at that certificate and see if your bonds have that certificate (handing witness Exhibit A to bill, on pages 15, 16 and 17 thereof)?

A. That is it, where those ten shares are on; that is the bond.

Q. The bonds you hold are just like that?

A. Yes sir.

Q. Could you fix about the day that you got them; could you fix the date at which you purchased them?

A. Oh, I couldn't tell you that; it is so many years ago.

Q. Since the war, since 1865?

A. I couldn't tell you unless I see in my book; I couldn't tell the year.

Q. Whom did you get your bonds from?

A. I think I bought them through Schaeffer Bros. at the exchange, the same as I buy any other securities.

Q. What did you pay for them?
A. I couldn't remember that, unless I find out in my book.
Q. You didn't pay much for them, did you?
A. I paid a good deal for them, because we expected to get a hundred cents on a dollar at that time, a very short time afterwards. They were high at that time, when I bought them, but I don't remember how much I paid for them.
Q. Are these sixteen bonds that you speak of all that you hold against the State of North Carolina?
A. Yes; that is, of that kind. I own those six per cent. bonds beside, where they pay the interest regular.
Q. You own sixteen of the kind mentioned in this bill of complaint?
A. Yes sir.
Q. And you own some other bonds beside?
97 A. I own some other bonds which they pay at six per cent. now.
Q. Couldn't you tell about the time when you purchased these sixteen from Schafer?
A. No I couldn't tell; it is so many years ago.
Q. You know the Schafers very well?
A. Of course I do.
Q. What amount do you hold of the six per cent. bonds?
A. Only a few.
Q. Could you give about the amount?
A. Only a few thousand.
Q. Is that the nearest you can come to it?
A. Yes.
Q. You are quite certain that you own sixteen of these second bonds?
A. I am.
Q. Don't you know how many you own of the others?
A. I told you I guess I own two.
Q. Two thousand dollars?
A. Yes sir.
Q. When did you get those?
A. I don't know. They gave me a new bond for the old ones at that time. I don't know how long.
Q. You never got any new bonds for the sixteen seconds?
A. No sir. If they would have given me six per cent. for the others I would have took it.
Q. When did you first hear about the suit between the State of South Dakota and the State of North Carolina?
A. I seen it in the paper.
Q. Was that the first intimation you had of such a suit?
A. Yes.
98 Q. When was that?
A. My dear sir, I can't remember, I seen it in the newspaper; I don't know when.
Q. Has it been six months ago?
A. I think so; I think it must be more than that.

Q. Did you talk to either of the Schafers about it?
A. No.
Q. Did you ever hear either of them speak of the suit at all?
A. Not that I recollect.
Q. You have never put in any answer to this bill, have you?
A. What bill?
Q. This bill of South Dakota against the State of North Carolina?
A. No sir.
Q. Have you ever employed counsel in the case?
A. I gave my—I have no counsel for them.
Q. What was it you were going to say you gave?
A. My stock is down at Schafer Bros., and I gave it to them.
Q. For what?
A. My bonds.
Q. What for?
A. I left my security with them for collection.
Q. Did you understand from them that they were going to collect it from the State of North Carolina?
A. They said for the last ten years they wanted to collect it from the State.
Q. When did you give your bonds to them to be collected?
A. From the beginning, when I bought them through them. They have got them ever since. I have some securities with them now for ten or fifteen years sometimes.
99 Q. Have you been in any way connected with this suit except as your name appears here as a defendant?
A. That is all.
Q. Did you ever agree to pay counsel in it at all?
A. I left that all in Schafer's action.
Q. What did you say to them about that?
A. Nothing at all. Whatever he does I am satisfied.
Q. And that agreement you say was made ten years ago?
A. I don't know when that agreement was made. I have no agreement with Mr. Schafer. I left my securities with him when he bought them, and I paid for them, and I have them there ever since.
Q. You have never had them in your possession at all?
A. Oh, yes; and then I put them back again, because I went to Europe, several times.
Q. When did you put them back with Schafer, the last time?
A. Some years ago.
Q. How many years ago?
A. How many I could not tell so I went to Europe; it must be ten or twelve years ago the last time I went to Europe.
Q. Have you not had your bonds in your possession during the last ten or twelve years?
A. No; I got some things there, laying there longer than that, with them.
Q. Have you not talked with either of the Schafers about them in the last year or two?

100 A. I spoke with Simon—who died.
Q. When?
A. Last winter, when we were down in Atlantic City.
Q. What did you talk about there?
A. I only asked him about don't we get our money back from the State of North Carolina? "Well," he said, "it is in suit now; I can't tell you."
Q. Simon Schafer told you that?
A. Yes.
Q. Then you had heard about the suit before you saw it in the newspaper, hadn't you?
A. That was this spring, when I seen him there in Atlantic City.
Q. You knew about the suit before that?
A. I seen it in the paper.
Q. Do I understand you to say that you knew nothing about this suit until you saw it in the newspaper?
A. From that time on I know it.
Q. Didn't they serve a paper on you to make you a defendant in the case?
A. That was about the time I suppose.
Q. Then the first time you heard of it was when they served the subpœna on you, wasn't it?
A. I suppose so; yes.
Q. What did you learn about it then?
A. Nothing at all, with the exception that the suit is on; that is all.
Q. When you were served with the subpœna didn't you take the pains to find out what it was all about?
A. Well, I don't remember how that occurred, when that subpœna came. I don't remember any more what I read at that time.
Q. You are not certain it was served on you, are you?
A. Yes; that I remember.
Q. What did you do?
A. I couldn't recollect nothing with the exception it was served on me; that was all.
101 Q. Didn't you go to see somebody about it?
A. Only Mr. Simon Schafer.
Q. What did he tell you about it?
A. Well, he can't tell nothing about it at all until it comes on.
Q. What did he have to do with it?
A. Why, they own some bonds themselves, the same as I do.
Q. Did he tell you anything about giving his bonds to South Dakota?
A. Not that I know of. No, he never said anything to me about that. I never heard of that neither.
Q. You never heard that he gave bonds to South Dakota?
A. No sir.
Q. Did you read this bill in the case of South Dakota against North Carolina?
A. I am not sure whether I did or not; I couldn't remember.
Q. Did you see a copy of it?

A. I can't recollect.

Q. Haven't you got a lawyer that you consult about your business affairs?

A. Sometimes I do and sometimes I haven't.

Q. Did you consult one about this particular matter?

A. No.

Q. You didn't read what was in this bill, that you know of?

A. I don't recollect.

Q. You have given yourself no concern about it at all, have you?

A. Not a great deal. I let it go the way it goes. I left it in the hands of Mr. Schafer.

Q. Did he tell you he would take care of your interest in it?

A. When I went to Europe I always gave him my bonds, and he would take care of it, and take interest in my bonds. Of course he would.

Q. Did he tell you he would take care of your interest in this suit?

102 A. Why, he takes care of my interest in the bonds and in thesuit, no doubt.

Q. Did he tell you that?

A. No; he didn't tell me that, because he knows very well that when I went to Europe every year, and he acts for me the same as I can for myself.

Q. When did you go to Europe last?

A. Ten or twelve years ago.

Q. Did you understand, when this subpœna was served upon you, that Mr. Schafer would attend to your interest in it?

A. I understood that Mr. Schafer will take care of my bonds whatever he does for him he does for me.

Q. Have you any interest in his bonds?

A. No sir.

Q. You are not a partner of his?

A. No.

Redirect examination by Mr. PECKHAM:

Q. You were speaking of being the owner of two sets or two classes of bonds?

A. Yes sir.

Q. And the class whereon there are now paying the interest, of that class of bonds how many bonds do you own?

A. I think I have got two.

Q. They are bonds of the State of North Carolina?

A. Yes; that was an old bond, and they gave an extended one, a six per cent. bond, on which they pay the interest now right along.

Q. Are the new bonds six per cent. bonds, too?

A. Yes sir; they have always paid the interest since they exchanged them.

Q. You got those bonds by exchanging for them other bonds of the State of North Carolina?

A. They called in the old bonds, so far as I can recollect,
103 and issued those new bonds, for which they paid the interest on it, and then they issued these new bonds for it.

Q. And those two bonds you still have?
A. Yes.
Q. Where are those two bonds?
A. I have got them in my box.
Q. In your office?
A. Yes.
Q. Can't you get them and produce them here?
A. Yes.

SIMON ROTHSCHILD.

Subscribed and sworn to before me this 10th day of September, 1902.

RUSSELL LUCAS,
Commissioner.

Adjourned to Tuesday, September 9, 1902, at 11 a. m. at the same place.

STATE OF SOUTH DAKOTA
vs.
STATE OF NORTH CAROLINA ET AL.

NEW YORK, *September* 9, 1902.

(Met pursuant to adjournment, with same appearances as at last hearing.)

Mr. SHEPHERD: Mr. Charles Salter having been noticed as one of the persons who would be examined in behalf of the complainant, and complainant's counsel having, upon request, declined to produce said Salter for cross-examination, and the State of North Carolina still protesting (through its counsel) against the jurisdiction of the court as to the subject-matter herein, proceeded to the examination of said Salter.

104 Mr. PECKHAM: Counsel for the complainant understands that Mr. Salter is called to the stand by the State of North Carolina, or its counsel, and makes no objection to such proceeding.

Mr. CHARLES SALTER, a witness produced by the defendant State of North Carolina, being first duly sworn, deposes and says in answer to the interrogatories propounded to him by Mr. Rountree, of counsel for said defendant, as follows:

Q. Do you remember when this suit of South Dakota against North Carolina was commenced?
A. No sir. As a matter of fact, really I know nothing about the suit.
Q. You don't know when this suit was commenced?
A. No sir.
Q. And you say you don't know anything about the suit?
A. No sir.

Q. Do I understand you to say that you don't know anything about the suit; you are certain of that?

A. Well, as we say we know a thing. I have heard of it, but that is all.

Q. So we understand you to say that you have very little intimate knowledge about this suit?

A. Yes sir.

Q. The summons or subpœna was served upon you, wasn't it?

A. Yes sir.

Q. You remember, of course, the time it was served upon you?

A. Yes sir.

Q. Now, what did you do when it was served upon you?

A. Well, I went down to Washington to hear what they had to say, but I wasn't called upon to say anything.

Q. You went to Washington?

A. Yes.

Q. Did you consult any counsel about the matter after you
105 were sued?

A. Yes sir.

Q. Will you tell us who it was?

A. I saw Judge Russell there in Washington, and had a conversation with him.

Q. That was after you were sued?

A. After the subpœna, yes sir.

Q. Had you seen Judge Russell before that time?

A. I have seen Judge Russell, and had some acquaintance with him for some years. I corresponded with him some years ago in reference to another class of North Carolina bonds.

Q. Was it while he was governor, or since?

A. He was governor.

Q. He was governor then?

A. Yes.

Q. What class of bonds?

A. The funding-act bonds.

Q. How many were there?

A. I think about 15 of those bonds, 1866 and '68.

Q. How many were there, you say?

A. I think about 15. I have got the bonds still. I have never taken any such offers as the State of North Carolina proposed to me. In 1866 they told me they would pay the interest, and after paying one or two years they laid down and did nothing until they came on in 1879 and offered me 15 cents in a four per cent. bond, which I never would accept.

Q. The bonds that you are now speaking about are not the bonds that are mentioned here in this suit, are they?

A. No; this is a different class of bonds; this bond having an endorsement that ten shares of stock of the North Carolina Railroad Co. was pledged as security, and I looked upon that as some day they would have to pay them.

106 Q. So the bonds you were speaking of a little while ago—the 16 or 17 bonds you were speaking of—were not the bonds that are mentioned here in your answer?

A. No sir.

Q. Did you see Governor Russell and have any conference with him about these bonds?

A. Well, nothing particular. I went down there. I was summoned to go, and I got away from there as soon as I could get away, because I was anxious to get back home.

Q. Hadn't you had some conference with him before you went to Washington about these bonds?

A. No; I don't think so. This matter I put with Schafer Bros. some years ago and left it to them.

Q. You didn't undertake then to control any part of this litigation?

A. Not at all, no sir.

Q. And you left it entirely with Schafer Bros.?

A. Yes sir.

Q. And you have done in this matter exactly what they have told you to do, haven't you?

A. Well, I haven't had any instructions from them.

Q. Didn't you file an answer?

A. Oh, that was from the court.

Q. Who suggested the employment of Governor Russell?

A. Well, that was Schafer Bros.

Q. They suggested the employment—Schafer Bros.?

A. Yes sir.

Q. And Governor Russell, then, he prepared this answer for you, didn't he?

A. I presume so. As I say, the matter was left entirely to Schafer Bros. I don't pretend to say anything about it, being a small holder.

107 Q. Didn't you employ Governor Russell as your attorney in this case?

A. As I say, I had nothing to do with the matter. If I put the matter in Schafer Bros.' hands for a settlement, why that is sufficient I should say.

Q. You filed an answer in this case. You remember that, don't you (handing witness paper)?

A. Well, that looks reasonable to me, if Governor Russell suggested to me I should do such a thing, if Governor Russell asked me to sign such a paper, that I should do it.

Q. So, if you signed this paper, you did it at the instance of Governor Russell?

A. Yes sir.

Q. And he was the attorney of Schafer Bros., was he?

A. Yes sir.

Q. And you left this matter entirely with Schafer Bros.?

A. Yes sir.

Q. To control and manage as they saw fit?

A. Yes.

Q. You haven't paid any counsel, have you, any fees?

A. No sir.

Q. And Governor Russell, then, is not employed directly by you, but by Schafer Bros.?

A. Yes sir.

Q. Have you had any conference with Governor Russell, about the filing of this answer, or about this suit?

A. No sir; I haven't seen Governor Russell since I was at Washington last spring.

Q. What occurred between you and Governor Russell there; what was the conversation, in substance?

Counsel for complainant objects to the question.

A. Well, I don't remember.

Q. Well, did you regard any conversation you had between Governor Russell and yourself as a matter of confidence at all; it was not confidential, was it?

108 A. No; I didn't think it was.

Q. Will you please tell what it was.

Counsel for complainant objects to the question.

Counsel for the State of North Carolina insists that this is a personal privilege of the witness, who has stated that it was not a confidential conversation.

Complainant's counsel states that he still insists upon the objection, that the statements of Governor Russell are immaterial and incompetent and mere hearsay, and the conversation is quite immaterial.

Q. Now, please answer the question, what it was, what the conversation was.

A. Well, really I couldn't say anything.

Q. So you had a conversation with him about the bonds—about this suit?

A. I had a conversation to the effect that he wanted me to be there in case of being called, that is all. As soon as I got away from there I left town.

Q. You went there; you saw him there?

A. I saw Judge Russell.

Q. What occurred between you and Governor Russell when you got there?

A. I went up to the court with him, and I danced around there for some time, and finally I got permission to go home.

Q. Did he say anything about the suit to you?

A. Nothing special, no.

Q. Did he say anything generally to you, about the suit?

A. I don't think he did.

Q. So then, you had a conversation with him about the

109 suit, and you can't recall anything he said about it?

A. I told you that the conversation was not about the suit, but in case my testimony was called upon that I should be there and I was ready; that is all.

Q. Did he tell you about South Dakota having sued the State of North Carolina?

A. I do not think there was anything said about that; not to my recollection.

Q. Before this suit was brought, before you were served with the subpœna, had you had any conversation with Governor Russell about this matter—these particular bonds?

A. Not that I remember.

Q. Did you have any conversation with Mr. Ricaud about it, Mr. A. G. Ricaud.

A. I don't think so; not to my recollection.

Q. Did you have any with Mr. Peckham about it, Mr. Wheeler H. Peckham?

A. No sir. I never saw Mr. Peckham, until this morning.

Q. I see signed to your answer here, as attorney for you, Mr. Alfred Russell; did you employ him?

A. I did not. I told you that this matter was entrusted to Schafer Bros., entirely.

Q. And they employed a counsel?

A. Yes sir.

Q. And they are managing this whole business, aren't they?

A. Yes sir.

Q. How many bonds have you?

A. 15.

Q. Of this class?

A. Of this class, yes sir.

Q. What we call second-mortgage bonds?

A. Yes sir.

Q. Could you give us the number of those bonds?

A. I haven't it with me, no.

Q. You could furnish it, couldn't you?

A. Certainly

110 (The witness afterwards produced the numbers of the bonds referred to as follows: 5975, 6029, 6059, 5967, 4235, 4248, 4582, 5533, 5532, 6226, 6225, 5966, 5638, 5636, 4299.)

Q. How long have you had those bonds?

A. Well, sir; I have had them more than thirty years.

Q. Do you remember who you bought them of?

A. No sir; I bought them through a broker. I bought them in Wall street, I don't know from whom, like all those bonds. I couldn't tell you. I have had South Carolina bonds and North Carolina bonds.

Q. You say here, in this answer, Mr. Salter, that if you can't have your bonds collected you want this suit dismissed; how about that; do you know anything about saying anything like that?

Counsel for complainant objects to the question on the ground that the answer of the witness is not shown to him.

Counsel for the State of North Carolina hands to the witness a certified copy of the answer of Mr. Salter.

A. Well, I presume that is correct.

Q. Is that what you want. You want this suit dismissed if you can't collect your bonds, is that what you want?

Mr. PECKHAM: Objected to as wholly immaterial; the pleading is the evidence of what he wants, and surely you can't ask the witness sitting here as to what he wants outside of that.

111 Counsel for the State of North Carolina state that they will not press the question inasmuch as it is objected to by counsel for the complainant.

Cross-examination by Mr. PECKHAM:

Q. Are you a citizen of the State of New York?
A. I am, sir.
Q. Natural citizen; that is, were you born here?
A. I was born here.
Q. And have lived here ever since?
A. Yes sir. I was born in the city of New York in 1827, 30th of April.

CHARLES SALTER.

Subscribed and sworn to before me this 10 day of September, 1902.

RUSSELL LUCAS,
Commissioner.

Mr. SIMON ROTHSCHILD, a witness called at the last hearing, produces one of the two bonds to which he referred in his testimony at said hearing, the same is handed to the commissioner, and a copy thereof made and certified to by the commissioner to be a copy of the bond so produced.

Redirect examination by Mr. PECKHAM:

Q. Do you remember, after the bill in this case, or the subpœna was served on you, going to any bank with reference to it?
A. Yes, sir.
Q. What bank?
A. I think it was the First national bank. I have forgotten the name of it.
Q. With whom did you go?
A. I went with Mr. Gibson.
Q. What occurred there?

112 Counsel for State of North Carolina object to conversation that took place between Mr. Rothschilds and the bank.

Q. I asked the gentlemen if they pay out the coupons for those bonds, and he said yes. I asked them then if it wouldn't be advisable to let the bondholders all know about the bond, and he said, "Well, we only pay the coupons, and that is all we do," and then I left and left the paper there.
Q. Left what paper there?

A. Just a memorandum he wanted to have that I was there; that is all.

SIMON ROTHSCHILD.

Subscribed and sworn to before me this 10th day of September, 1902.

RUSSELL LUCAS,
Commissioner.

SAMUEL M. SCHAFER, a witness produced by the defendant State of North Carolina, being first duly sworn, deposes and says in answer to the interrogatories propounded to him by Mr. Rountree, of counsel for said defendant, as follows:

Mr. ROUNTREE: Mr. Samuel Schafer, having been noticed as one of the persons who would be examined in behalf of the complainant, and complainant's counsel having, upon request, declined to produce said Schafer for cross-examination, and the State of North Carolina still protesting (through its counsel) against the jurisdiction of the court as to the subject-matter herein, proceeded to the examination of said Schafer.

Mr. PECKHAM: Counsel for the complainant understands that Mr. Schafer is called to the stand by the State of North Carolina, or its counsel, and makes no objection to such proceedings.

113 By Mr. ROUNTREE:

Q. Where do you live?
A. 52 West 46th street, in the winter.
Q. In the city of New York?
A. In the city of New York.
Q. What is the name of your firm?
A. Schafer Bros.
Q. Who were the partners?
A. My brother and myself.
Q. What was your brother's name?
A. Simon.
Q. Do you and your brother own any of these bonds upon which the State of South Dakota is suing the State of North Carolina?
A. My brother owns some, and the firm owns some.
Q. How many does your firm own?
A. Well, I couldn't tell you exactly; in the neighborhood of 100 I guess. I couldn't tell you exactly from my mind.
Q. Haven't you got the list of those bonds with you?
A. No sir.
Q. How many did your brother own?
A. He owned I believe thirty or forty thousand, individually.
Q. Thirty or forty of the bonds; they are a thousand dollars each, aren't they?
A. A thousand dollars each.
Q. And the firm owns the balance, that are owned by you and your brother?
A. Yes sir.

Q. You don't own any individually?
A. No sir.
Q. When was the last time you or your brother acquired any of these bonds?
A. I couldn't remember that; it must be a great many years ago.
Q. A great many years ago?
A. I think so; yes sir.
Q. Didn't you acquire some of these bonds—eight of them—within the last year or two, from a man named Lich-
114 tenauer?
A. I did not.
Q. Did your brother buy any?
A. I think my brother did.
Q. When was it he bought them?
A. I can't tell you exactly that. It may be two years ago.
Q. Have you seen those bonds?
A. I don't remember having seen them. My brother made the transaction.
Q. I asked you whether you had seen the bonds.
A. I don't remember that I saw them; I might have and might not; I can't think of that.
Q. Don't you know that those eight bonds which your brother purchased from Lichtenauer were canceled?
A. No, I don't remember that.
Q. Can you produce those bonds in court, so that we can see them?
A. I haven't got those bonds that I know of.
Q. Who has control of those bonds now?
A. I do not know.
Q. Who is the administrator of your brother, or executor?
A. The executor, I have just sent the papers to the surrogate, I expect to be—I believe I am the administrator—I mean executor. I haven't received my papers yet. My brother only died three or four weeks ago, and I am not quite over the shock yet.
Q. In the meantime who has control of these bonds?
A. I don't know anything about who has got control of these bonds you refer to. I have got the control of my brother's bonds, and I haven't seen them since his death, and have never looked after them. I didn't think there was any necessity for looking them up.
115 Q. You have never seen those bonds, then?
A. I can't positively state whether I did or did not.
Q. You know your brother bought those bonds from Mr. Lichtenauer?
A. I think he did. I am not positive on that point. You see my brother attended to this affair. I attended to the internal part of the business, and my brother made it his business to attend to this part. I attended to the business of the office, and he used to buy in the board and attend to outside business, you know.
Q. Did you see any correspondence from Governor Russell of

North Carolina with your brother, or your firm, or you, with reference to these bonds held by Mr. Lichtenauer?

A. When was that; when do you refer to; lately?

Q. Well, to be accurate about it, it occurred on October 24, 1900?

A. I don't remember. Maybe my brother attended to that all. I am pretty positive he attended to that.

(By Mr. PECKHAM:)

Q. Answer the question?

A. No; I don't remember.

Q. You don't remember?

A. No sir.

Q. Didn't you see the correspondence usually which your brother had with Governor Russell, with reference to the collection of these bonds?

A. No sir, he never would—he attended to that business himself, he preferred; that is his part; he was going to attend to it. If there was any such correspondence or anything, he attended to it, and if he did I couldn't very well answer what it was or what it was not.

Q. Have you got the book of correspondence between your brother and Governor Russell, or any other parties in North Carolina,
116 with reference to these bonds, from the first of January, 1900, to the first of May, 1901?

A. No; I didn't keep those things. Those books are in the office. I may hunt it up. I haven't got those books. I don't know anything about it. That is detail work, you know, for office boys.

Q. You don't know whether they are there or not?

A. I don't know whether they are there or not.

Q. Will you make an examination and see whether you have got such correspondence, and let me know?

A. Yes sir.

Q. And produce it?

A. Yes; if I have got it. I don't know whether I am here alone, or on advice——

Q. You are here as a witness now?

A. Will I produce them? Yes, if I can find them.

Mr. SHEPHERD: We ask you to produce the correspondence which took place between your brother and Governor Russell during the time which I mention, or with your brother and any other persons in North Carolina with reference to any of these bonds, upon which the State of South Dakota is suing the State of North Carolina including the eight bonds purchased by your brother from Mr. Lichtenauer.

The WITNESS: If there is such. I do not know whether there is such correspondence.

Mr. PECKHAM: I object to such request being made to the witness, because it assumes that the State of South Dakota is suing upon the bonds referred to outside of the ten bonds mentioned in the bill.

Q. How long would it take you to make an examination
117 and produce this correspondence, whatever it may be?

A. How long would it take me to produce it? First of all, it may take me some time to look for them, and consequently I might not be able to produce them. I have to find them first.

Q. *Precisely. How long would it take?*

A. This is an inopportune time. I am in active business around here and I came over here and am all alone—not all alone—but am absent quite suddenly, and I live out of town and leave at 3.45 in the afternoon, so I wouldn't have much time to do this, to produce them today.

Q. Will you produce them tomorrow?

A. I will hunt up the papers that your refer to, and if I find them I will produce them.

Q. You say your brother managed this matter particularly, and not you?

A. Yes sir, and not I.

Q. He is, unfortunately, dead?

A. I am sorry to say.

Q. How long have you had any of these bonds?

A. Those bonds are in our possession, and in his possession, oh, I guess 30 years; over that, if my memory serves me.

Q. Has any interest ever been paid on those bonds, to your knowledge?

A. I don't remember that.

Q. Don't you know very well that it hasn't been paid?

A. You ask me any interest.

Q. Paid you, I said.

A. Paid me? No; not that I know of.

Q. Has it been paid to anybody else, within your knowledge?

A. Not that I know of.

118 Q. You can't fix more definitely the time of purchase of those bonds?

A. Well, 25 or 30 years, in that neighborhood. I can't fix the exact time more definitely just now. If you give me a chance to think over it I might.

Q. Do you remember whether you had them on the first of January, 1870?

A. I think we had.

Q. You filed a petition to the legislature of North Carolina in 1901, asking for the payment of these bonds, didn't you?

A. My brother must have done that, if it has been done.

(By Mr. PECKHAM:)

Q. Won't you please pay strict attention to what the counsel asks, and answer the question only?

A. I don't remember.

Q. You don't remember whether your brother, on behalf of you and himself, and through a lawyer by the name of F. H. Busby, filed a petition which was presented to the legislature of North Carolina in 1901, asking for the payment of those bonds?

A. No sir; I don't remember that.
Q. Did you ever see any correspondence between your brother and Mr. Busby about that?
A. No sir.
Q. Do you know Mr. Busby?
A. No sir.
Q. Did you ever see him?
A. I might have seen him once. How many years ago I don't remember. I don't remember him, it is so long ago.
Q. Do you know whether or not, while Governor Russell was the governor of North Carolina, your brother and he had
119 any correspondence on behalf of himself and the firm, either or both, with reference to collecting these bonds?
A. Not that I know of.
Q. Did Governor Russell, between the 1st day of January, 1895, and the 1st of January, 1901, come into your office?
A. I think he has. Only the other day he came over accidentally.

(By Mr. PECKHAM:)

Q. The first of January, 1901, wouldn't be the other day. Between the 1st day of January, 1895, and the 1st day of January, 1901, that is the question?
A. I didn't know the gentleman in 1895.
Q. Did you know him before the 1st day of January, 1901?
A. I think I did.
Q. When did you get to know him between these two dates?
A. I was introduced by Mr.—I never knew the gentleman before I was introduced by Mr. Ricaud.
Q. When?
A. I can't state exactly.
Q. Was it before the 1st day of January, 1901?
A. It must have been around that neighborhood, about a year and a half ago, something like that; about a year.
Q. I asked you whether you were introduced to Mr. Russell by Mr. Ricaud prior to the 1st day of January, 1901?
A. I don't believe I know the gentleman more than a year and a half. That isn't prior; that is after 1901. I can't tell you exactly, my dear sir. It didn't strike me to remember it at all.
Q. When did you employ Governor Russell in this suit?
A. I didn't employ anybody.
120 Q. You didn't employ anybody?
A. No, sir; my brother had arrangements with Mr. Ricaud.

(By Mr. PECKHAM:)

Q. Won't you just answer the question?
A. Well, I didn't employ Governor Russell.
Q. Did you employ any counsel?
A. No, sir.
Q. Did your brother employ any counsel?
A. For what purpose?
Q. For the purpose of collecting these bonds for a portion of

which the State of South Dakota is suing the State of North Carolina?

A. I don't know whether he did.

Q. You never heard him say?

A. The only introduction I had was my brother introduced me to Mr. Ricaud; that is all I know.

Q. Your brother introduced you to Mr Ricaud?

A. Yes, sir.

Q. When was that?

A. About a year and a half ago, I guess, or two years.

Q. Can't you be more accurate than that. When did you first meet Mr. Ricaud?

A. I don't think it is much more than a year and a half, or two years.

Q. Did you meet him in the year 1900?

A. I can't state that exactly. I can't tell it exactly.

Q. Did you know Mr. Ricaud or Governor Russell, either or both, before this suit by the State of South Dakota against the State of North Carolina was brought?

A. Well, I know very little about the suit of those two States. I told you that my brother attended to all the affairs before,
121 and I don't remember.

Counsel for complainant asks to have the answer stricken out as not responsive.

Mr. SHEPHERD: I prefer you to answer as you think proper, and not to be restricted. You answer as you want to answer.

Q. That is the nearest you can come to answering my question. State whether you had any conversation or heard any conversation between your brother and Mr. Russell or Mr. Ricaud with reference to the collection of these bonds before the suit was brought by South Dakota against the State of North Carolina?

A. I know nothing about the suit. I don't understand the question.

Q. I will try to make it plainer. Did you participate in any conversation with Judge Russell, or Mr. Ricard, about the collection of these bonds, before October, 1901?

A. Which bonds do you refer to?

Q. I refer to the bonds on which the State of South Dakota is suing the State of North Carolina?

A. No sir.

Q. I mean the same class of bonds, and not the particular bonds on which the State of South Dakota has brought this suit?

A. I haven't heard any conversation, to my knowledge; I don't remember it.

Q. Did you participate in any conversation, or were you present where any discussion took place about collecting any bonds
122 from the State of North Carolina which you were interested in?

A. I might have been off and on in the office, and I might have

been. I only was going to state that I attended to my business in the office, and my brother attended to his. He might have been in and out, and everything like that, I wouldn't know it.

Q. That might have happened then during the year 1900?

A. No sir; that is two years ago.

Q. There could not have been, then, any conversation in your office, or discussion with reference to collecting the second-mortgage bonds of the State of North Carolina during the year 1900, which you heard?

A. I can't be positive to answer that question. I couldn't answer that. I forget. I don't forget; I don't know; I can't remind myself two years back what was done and what wasn't done.

Q. Haven't you and your firm regarded these bonds of North Carolina as rather an important matter?

A. I didn't; my brother did.

Q. And that is the reason that you didn't charge your memory with it?

A. That is one of the reasons, yes.

Q. When did you give those bonds to the State of South Dakota?

A. I didn't give any bonds to the State of South Dakota.

Q. When did your brother give them?

A. That I don't know; it must have happened some time when I was absent.

Q. Did he give your brother's individual bonds, or did he
123 give the bonds of the firm?

A. His individual bonds.

Q. Did you hear him discussing with any lawyer, or any one else, anything about giving any bonds to the State of South Dakota?

A. No sir.

Q. Where were you in the year 1900?

A. Well, what time of the year was it?

Q. The whole year?

A. Oh, I am most of the time in my office.

Q. You were not in Europe or elsewhere?

A. I am out of town sometimes in the summer. No, I wasn't in Europe.

Q. Where were you in the month of September, 1900?

A. Well, some days I stay at home in September. My birthday gets around there and I stay at home and take a vacation for a week or ten days.

Q. What part of the month of September does your birthday come in?

A. On the 12th. It is coming this week again.

Q. You don't commence to celebrate before the 12th, do you?

A. I take a little vacation. I stay home sometimes a few days before and sometimes a few days after.

Q. You didn't know that your brother gave the State of South Dakota any bonds, did you?

A. No sir; I did not.

Q. You never heard him say anything about it?

A. Oh, afterwards. I was even angry about it. I told him he

oughtn't to have done it. That was some time after, when I got back.

Q. Got back from where?

A. When I got back to the office. I can't remember where I was at that time. You asked me the question. I think I was home.

124 Q. And you hadn't heard him say a thing about giving these bonds to the State of South Dakota, nor had you heard any suggestion from anybody about giving the bonds to South Dakota until after it was done?

A. Until after it was done, yes sir.

Q. You are positive about that?

A. I am positive about that. I will swear up to that again.

Q. Do you know Mr. Robert W. Stewart of South Dakota?

A. No sir.

Q. He has never been in your office?

A. No sir; I don't remember the gentleman; I never heard the name.

Q. Did you ever read the bill in this case?

A. No sir.

Q. Did you ever see it?

A. No.

Q. You say that Mr. Ricaud introduced you to Mr. Russell?

A. Yes sir.

Q. And that that was a year and a half or two years ago?

A. Yes sir.

Q. Where was it you were introduced to Mr. Russell by Mr. Ricaud?

A. I guess it was in his office, if I am not mistaken.

Q. In Mr. Ricaud's office?

A. Yes sir.

Q. Or in your office?

A. I think it was in Mr. Ricaud's office. My brother introduced me to Mr. Ricaud. I never knew Mr. Ricaud either.

Q. How long had you known Mr. Ricaud?

A. I hadn't known the gentleman before I was introduced to him.

125 Q. How long had you known Mr. Ricaud before Mr. Ricaud introduced you to Mr. Russell?

A. May be six months or a year, I should say.

Q. Then you may have known Mr. Ricaud in the year 1899 or 1900?

A. About 1900 I should think, yes.

Q. Early part of 1900?

A. I do not know whether it was the early part of 1900. It might have been the latter part of 1900. It is around a year and a half or two years.

Q. You said you knew Russell a year and a half or two years ago, didn't you?

A. Yes; the other six months I can't tell, six months or a year, all I say is about two years.

Q. Had you had any discussion, or heard any discussion between Mr. Ricaud and your brother or yourself, with reference to collecting these bonds, or how to collect them?

A. My brother had discussions with Mr. Ricaud and I had nothing to do with it. As I said before, my brother was attending to that part of the business.

Q. About what time do you think these discussions between your brother and Mr. Ricaud commenced?

A. About two years ago.

(Mr. Ricaud, sitting by, states that he thinks it is about May, 1900, to which the witness assents.)

Q. You heard that conversation?

A. No sir.

Q. Didn't hear any of it?

126 A. I heard some of it incidentally, when they met in our office, and my brother was attending to the affairs with Mr. Ricaud.

Q. I understand that, sir.

A. But I didn't give it any attention because my brother was attending to it.

Q. What part of it did you hear?

A. That I don't remember what part I heard.

Q. Did you hear anything said about collecting these bonds through the aid of the State of South Dakota?

A. No, sir.

Q. Did you hear anything said about giving these bonds to the State of South Dakota?

A. No, sir.

Q. You are positive of that?

A. I am positive of that.

Q. That was never said at all?

A. I didn't know it at all until I got back, I told you, and my brother had presented them.

Q. And you never knew that he had the slightest intention of doing that until it was done?

A. No, sir; I did not.

Q. And you will swear to that?

A. I will swear to that.

Q. Did your brother have any financial interest in the State of South Dakota?

A. No, sir.

Q. He wasn't born or reared, or particularly interested in it, was he?

A. No, sir; he was born and reared in New York city.

Q. He has no children out there?

A. No, sir.

127 Q. Or interested in the schooling of any children there?

A. No sir; not that I know.

Q. You have charge of Mr. Salter's bonds and Mr. Rothschild's bonds, haven't you?

A. I believe they are in the office there.

Q. You know that your firm has had charge of all this matter, don't you?

A. Of all this matter—I don't know about these gentlemen's matters.

Q. On behalf of these gentlemen?

A. Not that I know of.

Q. Haven't you seen these gentlemen talking with your brother about them?

A. Yes; off and on.

Q. You say you were angry with your brother when you found out that he had given these bonds to South Dakota?

A. Well, I didn't approve of it exactly; not angry, not in the spirit you might mean it. I didn't approve of it. We didn't fall out about it.

Q. You strongly disapproved of it?

A. No; not strongly disapproved of it. I didn't have any reason to strongly disapprove of it.

Q. Then you weren't angry?

A. No; I disapproved of it. Put it that way instead of the word angry.

Q. What reason did your brother give for doing that act?

A. I don't know, sir.

Q. What reason did he give to you for doing that thing that
128 you disapproved of, to wit, giving the bonds to the State of South Dakota?

A. He never stated to me the reason.

Q. Didn't he tell you it was all right?

A. No sir.

Q. Didn't he tell you you wouldn't lose anything by it?

A. No sir; not that I remember; no sir.

Q. I wish you would try and think of that, Mr. Schafer, and tell me why it was that when you told your brother you had disapproved of the business transaction——

A. (Interrupting:) I didn't approve of it.

Q. (Continuing:)—that he didn't give you any reason at all?

A. How long ago is that now? Well, he might have said, or he did say that he thinks it would ultimately inure to his benefit, some of his bonds. I very naturally asked the question why he did it.

Q. And he said that it would inure to the benefit of your bonds?

A. No; it couldn't do no harm—no, of his bonds.

Q. Well, of his bonds; he had an interest in the firm bonds, didn't he?

A. Yes; but he gave his bonds away though. I refer to his.

Q. Are you quite certain that he didn't give an additional reason to that?

A. No sir; not that I can think of just now. No, he did not.

Q. That is the reason he gave?

A. What reason do you refer to, when you ask?

Q. The one that you have given?

A. Yes sir; the reason I have said; yes sir.

Q. You say that your brother and your firm have about 140,000 of these bonds?

129 A. I think about. I can't exactly tell. Around about that; about that amount, yes sir.

Q. Is that over and above these bonds that your brother purchased from Mr. Lichtenauer?

A. I don't know anything about those, sir. What I am stating here is about the bonds I know of.

Q. And there are about 140,000 of those?

A. Yes sir.

Q. And that is beside those that your brother gave to South Dakota?

A. I don't know whether they are in or not. There is only a difference of 10,000 bonds there. I can't tell by 10,000.

Q. Why is it when you knew about this suit you were not made party to it, having such a large interest in it?

A. What suit?

Q. The suit that we are trying now, to wit, the State of South Dakota against the State of North Carolina?

A. I didn't know anything about it.

(By Mr. PECKHAM:) I object to it. It is quite impossible for the witness to tell why the complainant does not make another man a party to the suit, and it is wholly immaterial if he knew.

Q. When did your brother become acquainted with the governor of South Dakota?

Complainant's counsel objects to the question on the ground that it assumes that the witness' brother became acquainted with the governor of South Dakota; that it does not appear that his brother ever became acquainted with him.

130 Q. Was your brother acquainted with him or not?

A. No sir; not to my knowledge.

Q. Do you know a gentleman by the name of Burke, a member of Congress for South Dakota?

A. No sir.

Q. You say you do not know him?

A. I don't know him.

Q. Did your brother know him?

A. He might have known him.

Q. Did you ever hear him speak about him?

A. No sir.

Q. You don't know a great deal about this suit, do you?

A. No sir.

Q. Have you been consulting with counsel during the progress of this case, since your brother died, as to how it is getting along?

A. What case? This Dakota case? No sir.

Q. Have you been consulting with him about the bonds—collection of them?

A. No sir; I haven't given any attention to much business since my brother died. It is only three or four weeks.

SAM'L M. SCHAFER.

Subscribed and sworn to before me this — day of September, 1902.

RUSSELL LUCAS,
Commissioner.

Adjourned to Wednesday, September 10, 1902, at 10.30 a. m., at the same place.

131 Examination of Mr. SCHAFER continued on the 10th:

Q. When we adjourned yesterday, I asked you to see if you had any correspondence between yourself or your brother for the firm of Schafer Brothers with Gov. Russell or any one else in North Carolina with reference to the collection of these bonds, on some of which same class of bonds the State of South Dakota brought suit against the State of North Carolina?

A. I did. I went over as far as I could, and I did not find any correspondence with my brother or the firm.

Q. You did not find any at all?

A. I found a letter that was addressed to my brother by Mr. Ricaud to meet him at his office, March 15, 1901.

Q. Didn't you find some correspondence between Gov. Russell and Mr. Ricaud, who was your counsel in this matter, during the month of March, or soon thereafter, in the year 1901?

A. I said I did, which I explained to you. I found a letter which Mr. Ricaud wrote to my brother, in which he asked him to call at his office.

Q. Will you produce that letter?

A. I can if I am compelled to.

Q. Do you decline to produce it?

A. I decline to produce it on the advice of my counsel.

Mr. Schafer declined to produce any correspondence which took place between Gov. Russell or Mr. Ricaud and his firm with reference to these bonds, as he claims the privilege of client a. 1 counsel.

132 A. I have no such correspondence prior to March 1901, at which time Mr. Ricaud and Gov. Russell had been retained by my brother as counsel for the firm in regard to the collection of these bonds.

Q. Mr. Schafer, do you decline to answer the question or produce the correspondence on the ground that it would tend to criminate yourself?

By Mr. PECKHAM: I object to that question on the ground that the witness suggested no such reason, and he has stated the reason that he regards the correspondence as privileged between himself and his counsel.

A. No.

Q. Have you other correspondence between your counsel and your brother in reference to these bonds written since March 1901?

A. Yes.

Q. Do you decline to produce that upon the same ground?
A. I do.

SAM'L M. SCHAFER.

Subscribed and sworn to before me this 10th day of September, 1902.

RUSSELL LUCAS,
Commissioner.

133 UNITED STATES OF AMERICA.

It is hereby certified that

THE STATE OF NORTH CAROLINA

No. 1352. No. 1352.

1000 Justly owes to —— —— or bearer, one thousand dollars, redeemable in good and lawful money of the United States, at the National Bank of the Republic in the city of New York, on the first day of April, A. D. 1919, with interest thereon at the rate of six per cent. per annum, payable semi-annually at the said bank on the first day of April and October in each year from the date of this bond, and until the principal shall be due, or surrendering the proper coupon hereto annexed. 1000

This bond is in renewal of one of a series of bonds issued under acts ratified January 27th, 1849, December 22d and 25th, 1852, and February 14th, 1855, for the construction of the North Carolina railroad, is exempt from all taxation whatsoever State, county and municipal, general and special, and is entitled to the same lien on the State's stock in the North Carolina Railroad Company to which the old bond for which this was given in renewal was entitled.

In witness whereof, the governor of the said State, in virtue
134 of power conferred by law, has signed this bond, and caused the great seal of the State to be hereto affixed, and her public treasurer hath countersigned the same at the seat of government of the said State, this first day of April, 1879.

[Seal of the State of North Carolina.]

THOS. J. JARVIS, *Governor.*

J. M. WORTH,
Public Treasurer.

Issued in pursuance of an act entitled "An act to adjust and renew a portion of the State debt." Ratified March 14th, 1879.

$30. Receivable in payment of all taxes, debts, dues, licenses. $30.

The State of North Carolina will pay thirty dollars to bearer at the National Bank of the Republic in the (73) city of New York on the first day of October 1918 on $1000 bond No. 1352.

J. M. WORTH,
Public Treasurer.

Fines and demands due the State, of every kind whatsoever.

Thirty-four coupons of like tenor and amount to the foregoing, payable semi-annually on the first days of April and October in each year, and the first thereof payable on the first day of
135 October, A. D. 1902, and the last on the first day of April, A. D. 1919, are attached to said bond.

I hereby certify that I compared the foregoing copy of bond numbered 1352 with the original thereof, and that same is a true and correct copy.

RUSSELL LUCAS,
Commissioner.

Dated: New York September 10, 1902.

136 UNITED STATES OF AMERICA, }
State, County, and Southern District of New York, } ss:

I, Russell Lucas, duly appointed by a stipulation and agreement of counsel, on file in the office of the clerk of the Supreme Court of the United States, to take testimony and depositions in the city of New York in the suit pending in the Supreme Court of the United States wherein The State of South Dakota is complainant and The State of North Carolina and others are defendants hereby certify that on the eighth, ninth and tenth days of September, 1902 at No. 25 Broad street in the city of New York, Mr. Wheeler H. Peckham appeared for the complainant and Messrs. James E. Sheperd, George Rountree and James H. Merrimon appeared for the defendant, The State of North Carolina.

That it was then and there agreed by the said counsel that the testimony to be taken should under the direction of myself be taken down by a skilled stenographer there present and should be put in typewriting. I further certify that the witnesses William Henry Gibson, Simon Rothschild, Charles Salter and Samuel M. Schafer were each by me duly sworn to tell the truth, the whole truth, and nothing but the truth and that the testimony of said witnesses was taken down by said skilled stenographer in the presence of said counsel and under my direction and was afterwards by said
137 stenographer put into typewriting and the typewriting shown to said counsel and no objection made to the same and that the said typewriting of his own deposition was then read over by each of said witnesses and each of said witnesses signed the same in my presence.

That the depositions hereto annexed are the depositions so taken typewritten and subscribed by said witnesses.

That the bond of the State of North Carolina referred to in the deposition of Simon Rothschild was offered and put in evidence by complainant's counsel and that I made a true copy of the same and of the whole thereof and that such copy is attached to the said dep-

ositions and forms a part of the deposition of said Simon Rothschild though attached at the end of all said depositions.

RUSSELL LUCAS,
Commissioner.

Dated New York city, September 10th, 1902.

138 The Supreme Court of the United States.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES Salter, and Simon Rothschild, Defendants.
} No. —, Original.

Agreement of Counsel as to Depositions.

It is agreed that Mr. I. W. Goodner of Pierre, South Dakota, shall be appointed commissioner to take depositions in the State of South Dakota, the taking of said depositions on the part of the complainant shall commence on the 18th day of August, 1902, at the office of said I. W. Goodner at Pierre, S. D. Any party to this suit shall be entitled to take depositions before said commissioner on twenty (20) days' notice to the other party to this suit, or to their solicitors or counsel.

It is agreed that Mr. Russell Lucas of the State of New York, city of New York, shall be appointed commissioner to take depositions at the instance of either party in the said suit in the city and State of New York. Any party to this suit may take depositions before said commissioner on ten (10) days' notice to the other parties, stating time and place.

It is agreed that no deposition shall be taken by either party to this cause before the 15th day of August, 1902.

ROBERT D. GILMER,
Att'y Gen'l for North Carolina.
WHEELER H. PECKHAM,
Of Counsel for Complainant.
D. L. RUSSELL,
Counsel for Charles Salter.

139 Endorsed: Supreme Court, U.S. October term, 1902. Term No. 9, original. The State of South Dakota, compl't, *vs.* The State of North Carolina *et al.* Stipulation to take depositions. Filed Aug. 8, 1902.

140 Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing typewritten page contains a true copy of the stipulation to take depositions in the case of The State of South Dakota, compl't, *vs.* The State of North Carolina *et al.*, No. 9, or'g'l, October term, 1902, as the same remains upon the files of said Supreme Court.

In testimony whereof, I hereunto subscribe my name
[SEAL.] and affix the seal of said Supreme Court, at the city of Washington, this 8th day of August, A. D. 1902.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

141 Endorsed: The Supreme Court of the United States. The State of South Dakota, complainant, *vs.* The State of North Carolina, Charles Salter and Simon Rothschild, defendants. Depositions of William Henry Gibson and Simon Rothschild, witnesses for the complainant, and of Charles Salter and Samuel M. Schafer, witnesses for the defendants in the above-entitled cause taken before me, and by me sealed and transmitted to the clerk of the above-named court. Russell Lucas, commissioner.

Endorsed on envelope: To the clerk of the Supreme Court of the United States, Washington, D. C. From Russell Lucas, 27 William St., New York city. The Supreme Court of the United States. The State of South Dakota, complainant, *vs.* The State of North Carolina, Charles Salter and Simon Rothschild, defendants. Depositions of William Henry Gibson, and Simon Rothschild, witnesses for the complainant, and of Charles Salter and Samuel M. Schafer, witnesses for the defendants in the above-entitled cause taken before me, and by me sealed and transmitted to the clerk of the above-named court. Russell Lucas, commissioner. Office Supreme Court of U. S. Received Sep. 13 1902. Opened in open court by order of court and filed December 15, 1902. James H. McKenney, clerk.

Endorsed: File No. —. Supreme Court U. S. October term, 1902. Term No. 9, original The State of South Dakota, complainant, *vs.* The State of North Carolina *et al.* Depositions of William Henry Gibson & Simon Rothschild witnesses for the complainant & of Charles Salter & Samuel M. Schafer for the defendants. Filed Dec. 15, 1902.

142 Supreme Court of the United States, October Term, 1901.

STATE OF SOUTH DAKOTA, Complainant, *against* THE STATE OF NORTH CAROLINA, Charles Salter, and Simon Rothschilds, Defendants.	No. 11, Original. In Equity.

Pursuant to the stipulation of counsel which has been certified to me by the clerk of the above-named court, which certify stipulation is hereto attached, I, Edward S. Battle, commissioner under authority thereof, on the 6th day of November, 1902, at the office of Robert D. Gilmer, attorney general, Supreme Court building in the city of Raleigh, N. C., proceeded to take depositions and to the examination of the witnesses in the above-entitled case as follows:

Present: J. C. L. Harris, Esq., counsel for complainant, Daniel L. Russell, Esq., counsel for defendant, Charles Salter, R. D. Gilmer,

Esq., attorney general, James H. Morrison, Esq., George Rountree, Esq., & James E. Shepherd, Esq., counsel for defendant, State of North Carolina.

143 (Defendant, Simon Rothschilds, not being present either in person or by counsel.)

It is stipulated that the testimony now to be taken shall be taken by a stenographer, written out by her, and subscribed by the witness, and it is agreed that these depositions be taken by question and answer.

MILES OSBORNE SHERRILL, State librarian, a witness produced in behalf of the complainant, being first duly sworn, deposes and says, in answer to the interrogatories propounded to him by counsel for complainant, as follows:

Q. Are you the librarian of the State of North Carolina?

A. Yes sir.

Q. Have you in your possession the files of the Raleigh Sentinel of August the 12th, 1867 and Feb. 26th 1868?

A. Yes sir.

Q. Are the files of these papers collected by the State and bound and kept in your office as a part of the records of the same?

A. That is my understanding.

Q. Mr. Sherrill, will you please examine this issue of the Raleigh Sentinel of Aug. 12th, 1867 and see if you find therein an advertisement signed by Kemp P. Battle, public treasurer and if so please read it, and the stenographer will please take it down.

A.—

"$800,000 North Carolina Bonds for Sale.

TREASURY DEPARTMENT OF NORTH CAROLINA,
RALEIGH, *July 26th*, 1867.

144 The board of internal improvements in consequence of certificate to them under an act of the General Assembly, entitled: 'An act to authorize the president and directors of the Western North Carolina Railroad Company to put said road under contract,' ratified 27th of February 1867, having notified me to subscribe for eight hundred thousand dollars of the capital stock of said company. In order to pay said subscription, sealed proposals will be received by the undersigned on or before the 10th day of August 1867, for the purchase of eight hundred thousand dollars in bonds of the State of North Carolina with coupons for interest at 6 % payable semi-annually on the first days of January and July in each year at the National Bank of the Republic in the city of New York, and the principal payable at the end of thirty years from the first of July 1867. Said bonds to be of the denomination of one thousand dollars each.

As collateral security for the payment of each bond, ten shares of stock in the North Carolina Railroad Company are mortgaged in accordance with "An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina railroad

and for other purposes." Ratified the 19th day of December 1866. The aforesaid bonds are exempt from taxation. No bid for less than par will be entertained.

KEMP P. BATTLE,
Public Treasurer.

July 26th."

Q. Examine the issue of the Raleigh Sentinel February 26th, 1868 and see if you do not find an advertisement of the same import in that issue, and signed by Mr. Kemp P. Battle, public treasurer.

145 A.—.

"STATE OF NORTH CAROLINA:

TREASURY DEPARTMENT,
RALEIGH, N. C., *Feb.* 15, 1868.

The board of internal improvements in consequence of a certificate to them under an act of the General Assembly, entitled: 'An act to authorize the president and directors of the Western North Carolina Railroad Company to put said road under contract,' ratified 27 February, 1867. Having notified me to subscribe for one million three hundred and forty-two thousand four hundred and sixty-six and 66⅔ dollars of the capital stock of said company, in order to pay said subscription sealed proposals will be received by the undersigned on or before the 21st of March 1868, for the purchase of one million three hundred and forty-two thousand bonds of the State of North Carolina, with coupons for interest at 6%, payable semi-annually on the first day of July and January in each year, at the National Bank of the Republic in the city of New York, and the principal payable at the end of thirty years from the first of April 1868. Said bonds to be of the denomination of $1,000 each.

As collateral security for the payment of each bond ten shares of stock in the North Carolina Railroad Company are mortgaged in accordance with an act; 'An act to enhance the value of the bonds to be issued for the completion of the North Carolina railroad, and for other purposes.' Ratified 19th Dec. 1866. The aforesaid bonds are exempt from taxation. No bid for less than par will be entertained.

KEMP P. BATTLE,
Public Treasurer.

Feb. 18th."

146 "STATE OF NORTH CAROLINA:

TREASURY DEPARTMENT,
RALEIGH, N. C. *Feb. 26th*, 1868.

The board of internal improvements in consequence of a certificate to them under an act of the General Assembly, entitled: 'An act to authorize the president and directors of the Western North

Carolina Railroad Company to put said road under contract,' ratified 27th, February 1867. Having notified me to subscribe for one million three hundred and forty-two thousand four hundred and sixty-six and 66⅔ dollars of the capital stock of said company in order to pay said subscription sealed proposals will be received by the undersigned on or before the 21st of March 1868, for the purchase of one million three hundred and forty-two thousand bonds of the State of North Carolina with coupons for interest at 6%, payable semi-annually on the first day of July and January in each year at the National Bank of the Republic, in the city of New York, and the principal payable at the end of thirty years from the first of January 1868. Said bonds to be of the denomination of $1,000 each.

As collateral security for the payment of each bond ten shares of stock in the North Carolina Railroad Company are mortgaged in accordance with an act: 'An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina Railroad, and for other purposes.' Ratified 19th Dec. 1866. The aforesaid bonds are exempt from taxation. No bid for less than par will be entertained.

KEMP P. BATTLE,
Public Treasurer.

Feb. 18th."

147 Q. Please examine the issue of the Raleigh Sentinel of Feb. 18th, 1868, and see if you find the advertisement which you have just read, and then examine each successive issue for thirty days thereafter, and see if you find the same advertisement in each issue of this paper?

A. Up to and including the issue of March 6th.

Q. Examine each issue of the Raleigh Sentinel commencing Friday July 26th, including the issue of August 12th, and see if you find the advertisement which is copied at the beginning of your testimony.

A. July 26th, to August 12th, inclusive, 1867.

M. O. SHERRILL.

Subscribed to this — day of November, 1902.

KEMP PLUMMER BATTLE, a witness produced on behalf of the complainant being first duly sworn, deposes and says in answer to the interrogatories propounded to him by Mr. Harris of counsel for complainant, as follows:

Q. Mr. Battle will you please state what years you were public treasurer?

A. From about the 28th of December 1865 until the 1st of July 1868; I went in a few days before the 1st of January.

Q. Will you please examine chapter 228 of the Laws of 1854–'55, and chapter 106 of the Laws of 1866–'67, and state whether you issued the bonds required of you by these two acts?

A. I think I did, sir.

Q. Will you please examine the advertisement in the Raleigh

Sentinel of February 26th, 1868 and August 12th, 1867, and
148 state whether or not they were inserted in these papers by you, in your official capacity as State treasurer?

A. They were sir.

Q. This was done also in compliance with chapter 228 of the Laws of 1854–'55, and chapter 106 of the Laws of 1866–'67, were they not?

(Counsel for the defendant, State of North Carolina objects to this question as being incompetent and irrelevant upon the ground that it is an effort to prove by the witness that he has complied with the law, and the only thing you can prove was what he did, not whether it was in accordance with the law, in his opinion.)

A. I can state I endeavored to comply with the law—I think I did.

(Answer objected to by the counsel for defendant, State of North Carolina.)

Q. Was there any fraud in connection with the issuance of these bonds, Mr. Battle?

(The counsel for the defendant, The State of North Carolina, objects to the question.)

A. None that I knew of.

(1) Q. Did the State of North Carolina subscribe for stock in the Western North Carolina railroad while you were treasurer?

A. Yes sir.

Q. Can you state at what time?

A. No sir I do not remember at what time.

(Counsel for defendant, State of North Carolina, objects to
149 that; being a matter of record.)

Q. Can you state for what amount?

A. No sir I cannot state without looking at the treasurer's reports, but on amount sufficient to cover the bonds embraced in the second advertisement heretofore read

Q. What did you do with these bonds, Mr. Battle?

(2) A. Well the Western North Carolina railroad did bid for them, and I turned them over to them.

Q. Did you exchange these bonds at par for the stock of the Western North Carolina railroad?

A. In that way, sir, by passing receipts.

Q. You mean to say that you subscribed for stock in the Western North Carolina railroad as required by law, for the State of North Carolina and paid for the stock of the railroad company with the bonds mentioned in the two advertisements heretofore set out, the railroad company accepting these bonds at their par value?

(Counsel for the defendant, State of North Carolina, objects to the question, upon the ground that it calls for the opinion of the witness as to whether the subscription and the delivery of the bonds was

made in accordance with law, and assumed that it was so done, which is denied by the counsel.)

A. I think substantially that was the case. I am inclined to think though, that the practice was to consider the bonds as having been paid for, and receipting to the company for the money, but that would be mere matter of form.

Q. I understand you to mean that the stock of the company was paid for by the bonds of the State?

150 A. Yes sir that was substantially so.

It is agreed by counsel for all parties that the following acts of the General Assembly of North Carolina are in evidence:—First, chapter 228 of the Laws of 1854–'55, entitled "An act to incorporate the Western North Carolina Railroad Company," ratified 15th day of Feb. 1855. Chapter 106 of the Public Laws of 1866–'67 entitled "An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina railroad, and for other purposes," ratified 19th day of Dec. 1866. Chapter 138 of the Public Laws of 1879, entitled "An act to adjust and renew a portion of the State debt," ratified 14th day of March, 1879. Chapter 98, Laws of 1879, entitled "An act to compromise, com-ute and settle the State debt," ratified the 4th day of March 1879. Chapter 82, Acts of 1848–'9, being "An act to charter the North Carolina Railroad Company," ratified —— — ——. Chapter 32 of the Laws of '54–'55, ratified —— — ——.

The acts above mentioned are referred to in the pleadings, and are attached as exhibits to these depositions, (A–F). It is further stipulated by the counsel representing all parties that counsel on either side may put in evidence and use in the trial of the cause, also evidence chapter 98 of the Laws of 1866–'67, entitled "An act to authorize the president and directors of the Western North Carolina Railroad Company to put said road under contract," and ratified 27th of Feb. 1867, any act of the General Assembly of North Carolina, public or private, as they appear in the printed volumes, which are to be printed as part of the evidence in the cause and annexed as an exhibit.

151 Cross-examination by counsel for the State of North Carolina:

Q. Don't you remember Mr. Battle that the State subscribed for two-thirds of the stock of the Western North Carolina railroad?

A. That is my memory, yes sir.

Q. By the 8th section of the original charter of the Western North Carolina Railroad Company, it was provided that whenever it should appear to the board of internal improvements of this State, by certificate signed and sealed by said agent, commissioners or a majority of them, the sum of $300,000 has been subscribed for, and taken and the 5% paid in thereon, said board of internal improvements shall be, and they are hereby authorized and required to direct the treasurer of the State to subscribe, on behalf of the State, to the stock in said Co. to the amount of $600,000 in the capital stock

of said Co." Did you have, in your office as treasurer, such certificates as are described in this section?

A. I do not remember of it.

Q. If such certificates had been made, would they not have been a part of the records of your office?

(Counsel for defendant, Charles Salter, and counsel for complainant object to this question, as being immaterial.)

A. I should think so as a matter of opinion.

Q. Did you do any official acts as treasurer that were not made a matter of record?

(Same objection by counsel for defendant Charles Salter, and counsel for complainant.)

A. That's a pretty hard question. Not unless it was accidentally. Some time my clerk might have forgotten.

152 Q. Do you have any recollection of ever having subscribed for stock in the Western North Carolina Railroad Co. on behalf of the State any sum whatever at any time?

(Objection by counsel for defendant, Charles Salter, and counsel for complainant on the ground that the subscriptions by the State were made by public law, and the law speaks for itself.)

A. I have no positive remembrance. It has been 35 years ago.

Q. Have you, at any time, since you ceased to be treasurer of the State, examined the records of that office with a view to seeing whether there were any records of your action in issuing the bonds to which your attention has been called in your examination-in-chief?

(Objected to by counsel for defendant, Charles Salter, and counsel for complainant, as being immaterial.)

A. I have not.

Q. Have you been requested to make any such examination by the complainant in this case, or by any one of the defendants?

(Same objection for defendant, Charles Salter, and counsel for complainant.)

Q. No sir.

Q. Did the Western North Carolina Railroad Co., while you were treasurer, to your knowledge, issue any stock to the State of North Carolina whatever, and certificates of stock?

A. I have no recollection of it.

153 Q. State whether or not the Western North Carolina Railroad Co. made any sealed bid for the bonds about which you were examined in chief, at any time?

A. I have no recollection on the subject.

Q. If said Co. did make any sealed bid, what would have been done with that bid by you as treasurer?

A. It would have been accepted.

Q. Would it have been filed as a part of the records in your office?

A. Yes sir.

Q. Have you ever searched the office to see if any such bid was there?

A. No sir.

Q. Can you recollect anything in relation to the terms of any bid file- of the Western North Carolina Railroad Co. for said bonds?

A. I remember the president giving me a receipt for them.

Q. Do you remember who the president was?

A. Col. Tate.

Q. I ask you if you do not remember that Mr. Simonton was president and Mr. Tate was secretary?

A. I do not know sir, Tate acted. He came to my office and made the transaction.

Q. I understand you to say then, Dr. Battle, that you have no recollection of what transpired between you as treasurer and the Western North Carolina Railrod Co., except that Mr. Tate receipted you for bonds?

A. Yes sir.

Q. Look upon this book and see whether or not you recognize it, and what book it is?

154 A. It is the book of bond receipts belonging to the treasury department.

Q. State whether you find the receipt of Tate to which you referred in your evidence in the last question?

A. Yes sir.

Q. Please read it.

A. Simonton was treasurer.

Q. Just read the receipt, Doctor. Do you recognize that as the receipt that Tate gave you?

A. Yes sir.

$750,000. TREASURY DEPARTMENT, N. C.,
RALEIGH, *Sept. 3rd*, 1867.

Rec'd of Kemp P. Battle, public treasurer, seven hundred and fifty ($750) State coupon bonds of $1,000 each, dated July 1st, 1857, and running thirty (30) years. "Issued by authority of an act of the legislature of North Carolina to incorporate the Western North Carolina Railroad Company," ratified the 15th day of February 1885, chapter 228 as amended by an act ratified the 27th day of February 1867, chapter 98 entitled "An act to authorize the president and directors of the Western North Carolina Railroad to put said road under contract" and further by an act ratified the 19th day of December, 1866 chapter 106 entitled "An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina Railroad, and for other purposes," said bonds numbering 3772 to 4521 both inclusive.

SAM'L McD. TATE,
Pres't W. N. C. R. R. Co.,
For R. F. SIMONTON, *Treas.*

Q. Do you know the handwriting of Sam'l McD. Tate?
155 A. Yes, sir.
Q. State whether or not that receipt is signed by him?
(3) A. That is. Tate was president. Simonton was treasurer, as I said. The next was R. F. Simonton, treasurer, for Sam'l McD. Tate, president. The last one is by Simonton only, and I do not know his signature. I cannot say now.
Q. Is this the receipt that was given?
A. Yes sir that is

Introduced without objection.

$600,000.

TREASURY DEPARTMENT,
RALEIGH, *April 2nd*, 1868.

Rec'd of Kemp P. Battle, public treasurer, six hundred (600) State coupon bonds of $1,000 each, dated January 1st, 1868, and running thirty (30) years, "Issued under act of assembly, to incorporate the Western North Carolina Railroad Co." ratified 11th February, 1855, as amended by act ratified Feb. 27th 1867, chapter 89, and act ratified December 19th, 1866, chapter 106, said bonds numbering 4572 to 5171 both inclusive.

R. F. SIMONTON, *Treasurer*,
For SAM'L McD. TATE,
Pres't W. N. C. R. R. Co.

$773,000.

TREASURY DEPARTMENT,
RALEIGH, N. C., *April 16th*, 1868.

Rec'd of Kemp P. Battle, public treasurer, fifty State coupon bonds of $1,000 each dated July 1st 1857, and due July 1st, 1897,
156 from No. 4522 to 4571 both inclusive also 723 State coupon bonds of $1,000 each dated January 1st, 1868, due January 1st, 1898, Nos. 5172 to 5894 both inclusive "Issued under act of General Assembly to incorporate the Western North Carolina Railroad Co.," ratified Feb. 15th 1855, as amended by act ratified Feb. 27th, 1867, chapter 98 and act ratified December 19th–1866 chapter 106—entitled An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina railroad and for other purposes.

R. F. SIMONTON,
Treasurer W. N. C. R. R. Co.

The next one is a receipt by H. C. Cowles, treasurer Western N. C. Railroad Co., dated May 20th, 1869, for $340,000, which reads as follows:—

Western N. C. R. R. Co.

$340,000.

TREASURY DEPARTMENT,
RALEIGH, N. C., *May 20th*, 1869.

Rec'd of D. A. Jenkins, public treasurer, three hundred and forty State coupon bonds of $1,000 each, dated Oct. 1st, 1868 and running

thirty years issued by authority of "An act of the General Assembly of N. C.," ratified Feb. 15th, 1855—chapter 228, as amended by acts of 1856 and '67 chapters 98 and 106.

Said bonds being numbered from 5914 to 6253 both inclusive.

HENRY C. COWLES,
Tr. W. N. C. R. R'd Co.

These are admitted without objection.

157 The counsel for the State introduces the petition presented to the legislature of North Carolina about the first day of March, at its session of 1901. Said petition being in behalf and signed by S. M. Shaffer and S. Shaffer, by F. H. Busbee, attorney. A printed copy of this petition marked Exhibit G is herewith filed, and is agreed by counsel that the same shall be considered as original.

Q. Mr. Battle, in this exhibit you will find an endorsement by you on one of these bonds, which endorsement is similar to that on the others in evidence?

A. Yes sir.

Q. You will notice that you undertook to mortgage or pledge ten shares of the stock in the Western North Carolina railroad, originally subscribed by the State. Were not all of these shares delivered and pledged by you?

A. No sir.

Q. When you delivered these bonds?

A. No sir.

Q. And when you made that endorsement?

A. That is all that was done sir.

Q. Did the State of North Carolina have any certificates of stock at that time in the North Carolina Railroad Co.?

A. I do not know sir.

Q. Don't you know as a fact that they never have issued any?

A. No sir I do not know anything about it. I saw something in the paper about it.

Q. So then there were no certificates to your knowledge in existence at the time you made this endorsement on these bonds,

158 and at the time of their delivery to the railroad Co.?

A. No sir.

Q. We understand you to say that you have no recollection of making any subscription to the Western North Carolina Railroad Co.?

A. No sir I do not remember.

Q. And that all you did was simply to take these receipts and deliver the bonds?

A. I cannot say that.

Q. Have you no recollection of doing anything else?

A. I have no recollection, but I cannot say it was not done.

Q. But you have no recollection of doing it?

A. No sir.

Q. Nothing more than taking these receipts and delivering these bonds?

A. No I have not.

Q. Except signing the endorsement on the back of the bonds as set out in the bill of complaint, and in the petition (Exhibit —)?

A. I want to state one thing, you asked me did I remember anything about the North Carolina Railroad stock that has been issued. I was one of the counsel in the Swazey case, and I think that it was stated that there were no certificates in the possession of the State.

Q. What time was that Swazey case?

A. About in 1873 or 1874.

159 Cross-examination by counsel for defendant Charles Salter:

Q. Dr. Battle it is alleged in the answer of the State of North Carolina that you did not make any advertisement in the newspapers for the sale of these bonds. Is that so or not?

A. It has been proved that it was not.

Q. Chapter 37 of the act of 1855 required the public treasurer to advertise in one or more newspapers as he may think best, and invite sealed proposals for the purchase of these bonds. Did you obey that law?

A. I have no positive remembrance about it, except I think I obeyed the law, of course. I cannot remember.

Q. You have seen the advertisement which was in evidence?

A. Yes sir.

Q. Now having seen that, I ask you did you advertise according to the requirements of section 37 of the act of 1855?

A. I think I did.

Q. This same act, chapter 37, required you to accept those terms which might be most advantageous to the State. Did you do that?

A. Yes sir.

Q. The same section provided that you should not sell the bonds for less than their par value?

A. I sold them to the company for par, and that was the custom of the office.

Q. I understood you to say that the form of the transac-
160 tion was that the company paid you as treasurer the par of the bonds in cash, and that you paid the company the par of the stock subscription owned by the State to the company in cash?

A. That was the form of it but no money passed.

Q. But the net result to all the parties, that is: to the State and to the railroad company was precisely the same as if the cash had passed, was it not?

(Counsel for the defendant, State of North Carolina, object to the question. First, because it is argumentative and leading, and calls for an opinion rather than for facts, and this objection is made by them as to all of the foregoing testimony, upon the cross-examination by counsel for defendant, Charles Salter.)

Last question withdrawn after objection.

Q. You have already said that you sold the bonds to the railroad Co. at par?

A. Yes sir.

Q. I understood you to say that you paid the company for the stock subscription due by the State to the company, and that you paid it at par in those bonds?

A. Yes sir, and received stock for the same amount.

Q. Dr. Battle, in this transaction, did you act under the advice of counsel?

(Counsel for the defendant, State of North Carolina, objects to the question, upon the ground that it is immaterial and irrelevant. It makes no difference what advice he has.)

The examining counsel states that he asked the question
161 for the purpose of showing the good faith of the State, and of Dr. Battle, its public treasurer in this transaction.

A. I do not remember Governor, whether I consulted Col. Rogers, the attorney general, about that specifically, but I constantly communicated with him about my office, but I cannot say whether in this particular case. I think it is very likely.

Q. Was there a receiver appointed by the United States circuit court in the Swazey suit to take and hold the stock owned by North Carolina in the Western North Carolina Railroad Co.?

A. As to the stock, I know that Solicitor General Phillips received the dividends, and paid them over to the bondholders, I do not know whether they received the stock or not.

Q. These dividends were paid to the State as dividends on its stock, were they not?

A. They ought to have been paid, but they were intercepted by the court.

Q. Then they were paid to the receiver?

A. Yes, sir, the court would not allow it to go to the treasurer.

Q. You do not know whether the received got the certificate of stock or not?

A. No sir, I never heard anything about that.

Q. You remember the State owned $3,000,000 of stock?

A. Yes sir.

(4) Q. How much stock did the State hold in the Western North Carolina Railroad Co.?

162 A. $2,000,000 at first by the act of 1848, and $1,000,000 by the act of 1854, making $3,000,000.

Recross-examination by counsel for the defendant State of North Carolina:

Q. By what authority, if any, did you exchange the bonds of the State for stock in the Western North Carolina Railroad Co.?

A. Well, as I said, ever since the bonds fell under par, the idea was that the company had a right to buy at par, and receipt to the State for the amount and get the bonds, and the State received that much stock for them.

Q. You knew that the act of the General Assembly chartering the Western North Carolina Railroad Co. expressly required that the bonds should be sold for money, and not at less than par?

A. Yes sir.

Q. In disposing of these bonds to the president or treasurer of the railroad company, you did not sell them for cash, but simply turned them over to the company in lieu of paying money. Is that right?

A. Yes sir.

Q. Now did you not take that course, because at that time you had knowledge that the bonds could not be sold at par?

A. Certainly.

Q. Did any one ever offer, or put in a sealed bid, or a bid of any kind, to take the bonds at par?

A. No sir, the company made the only offer.

163 Q. I ask you if you do not remember that the offer made by the company was simply a verbal offer, made by its treasurer, and that no sealed bid was put in by the company at all?

A. I do not remember anything about that.

Q. I ask if you have any recollection of ever having entered as subscription on behalf of the State, upon the books of the Western North Carolina Railroad Co.?

A. No sir. I do not remember anything about it.

Q. And if there was ever a subscription entered on those books, or any certificate of stock issued to the State, you know nothing of it?

A. No sir.

Q. Now I will ask you Doctor, if, when you were first questioned in regard to your having advertised for sealed bids, you did not say to the counsel for the State of North Carolina, in this case that you had no recollection of making such advertisement?

A. I did not have, until I saw it here this morning.

Q. Do you not remember that counsel for the State of North Carolina did enquire of you in regard to this matter before preparing the answer to the bill of complaint.

A. Yes sir.

Q. With a view to making a correct statement in the answer?

A. No sir.

(Question objected to by counsel for defendant, Charles Salter, unless it is propounded for the purpose of impeaching the witness.)

A. Yes, sir.

164 Recross-examination by counsel for defendant Charles Salter:

Q. Suppose the railroad Co., had paid you the par of the bonds in cash, and you had paid in cash the par of the stock to the railroad Co., please state wherein would have been the difference between that transaction, and the transaction which you actually made?

A. Well, the difference was very apparent, Governor, the company would get the bonds and sell them for less than par and would not get the benefit of the difference between the amount they got and par. The State got the stock at par.

Q. You say the State got the stock at par, by this you mean, do you, that the State paid par for the stock?

A. The State paid $1,000 bonds, and got $1,000 stock.

Q. Do you want to adhere to that answer you made just now, after hearing that question?

A. I thought you wanted to know the whole result of the thing. The legal position of the parties was that the State would have the stock for $1,000, and the company would have the bonds for $1,000.

Q. So the company paid $1,000 for one thousand of bonds, and the State paid $1,000 for $1,000 of stock?

A. The company paid $1,000 stock for $1,000 bonds.

KEMP P. BATTLE.

Subscribed to this — day of November, 1902.

Explanation.

I sign this paper with the following explanation:

165 1. In question marked (1) the word "bonds" should be "stock."

2. In answer marked (2) "did part for me" is unmeaning—evidently should be "did bid for them."

3. In answer marked (3) it should be Tate was president and Simonton treasurer as already stated.

4. In question marked (4) I understood that the North Carolina Railroad Company was meant and answered accordingly. I do not know what stock the State had in the W. N. C. R. R. Co.

K. P. BATTLE.

Corrections made by witness allowed to go in by consent of counsel present.

ED. S. BATTLE, *Com'r.*

Adjourned until 3.30 this day at same place.

Taking of testimony resumed according to adjournment.

Further hearing of the court adjourned until Nov. 7th, same place, 10 o'clock a. m.

Testimony resumed in pursuance of adjournment.

CHARLES B. AYCOCK, witness produced in behalf of defendant, State of North Carolina, being first duly sworn, deposes and says, in answer to the interrogatories propounded to him by counsel for the defendant, State of North Carolina, as follows:

Q. Do you occupy any official position in the State of North Carolina, and if so what and when did your term commence?

166 A. Yes. I am governor of the State, and was inaugurated on the 15th of January, 1901.

Q. Did the authorities of the State of South Dakota make any demand upon you for the payment of these bonds before bringing suit thereon?

A. No.

Q. Did you have any negotiations with them or with any person on their behalf with reference to these bonds before this suit was brought?

A. No.

Q. When did you first learn that the State of South Dakota was in possession of any bonds issued by the State of North Carolina, claiming to be the owner thereof?

A. My recollection is that my first knowledge came from the newspaper account of the application of South Dakota to the supreme court for leave to file this bill.

CHARLES B. AYCOCK.

Subscribed this — day of November, 1902.

——.

Dr. J. J. MOTT, witness produced on behalf of the defendant, State of North Carolina, being first duly sworn, deposes and says, in answer to the interrogatories propounded to him by counsel for defendant, State of North Carolina, as follows:

Q. Dr. where do you live?

A. Statesville, N. C.

167 Q. What is your profession, or vocation.

A. I am a farmer.

Q. State whether or not at any time in your life you sustained any relation to the North Carolina Railroad Co., if so what relation and when?

A. I was director of the Co., appointed by the State, and president in 1868 to 1872—about four years.

Q. During the time you were president of the Co., state whether you had any and if so, what knowledge of the bonds of the State of North Carolina issued by the State under the act of Dec. 19th, 1866?

A. I received $340,000 in bonds—three hundred and forty $1,000 bonds of that issue. The treasurer of the Co. received them from the treasurer of North Carolina.

Q. State whether or not you, acting as president of your Co., or any one acting for the Co. to your knowledge, paid the State anything whatever for those bonds?

A. No I paid the State nothing.

Q. Now state whether or not you disposed of the bonds which had been delivered to you by the treasurer of the State, and if you did, state at what price?

(Objection by counsel for complainant and defendant, Charles Salter, because question is irrelevant to any issue in this case.)

A. I sold bonds at different times to different people. Sold 340 bonds at prices ranging from 24c. to 45c.

Q. State whether that was the best price you could get for them?

(Objection by counsel for complainant and defendant,
168 Charles Salter, because question is irrelevant to any issue in this case.)

A. At the time it was the market price.
Q. Who was the treasurer of the Co. whilst you were president?
A. H. C. Cowles and Robert F. Simonton.

Cross-examination by counsel for defendant Charles Salter:

Q. Do you not know that North Carolina subscribed to the stock of the Western North Carolina Railroad Co.?
A. Well so far as I can understand the matter, why it did.
Q. Do you not know that the State held some two-thirds of the stock in the Co.?
A. It held the majority of the stock.
Q. Did you not as president of the railroad Co. in the matter of these bonds and in the matter of your receiving these bonds from the State, act in compliance of the law as set out in the charters of the Western North Carolina Railroad Co., and the amendment thereto?

(Counsel for the defendant, State of North Carolina, objects to that on the ground that the witness is asked to express an opinion instead of stating facts.)

A. I supposed I was acting in accordance with the law in receiving the bonds.
Q. Is it not your best belief that you did whatever the charters of your Co. and the law required you to do?

(Same objection by counsel for defendant, State of North Carolina.)

169 A. I answer yes.
Q. Doctor did you not borrow money on these bonds, putting them up as collateral?
A. Yes.
Q. So because you could not pay the debt, were they sold by the pledgees?
A. No not necessarily. I want to explain: The bonds were in my hands, I would not put up all of them as collateral, and of course they were there subject to my order to sell, they were not sold by the pledgee in the ordinary way of closing out that contract, they were sold on my order altogether. There was one transaction where they were borrowed outside and used as collateral, but I sold other bonds and paid that debt and relieved the collateral.
Q. You offered these bonds on the open market for sale, did you not?
A. Yes through brokers.
Q. You regarded them as good and honest bonds, did you not?
A. I did at the time. I regarded these as good and honest bonds. I did not know about the special-tax bonds. Upon further reflection I think the State bonds were never hypothecated, but were placed with brokers with an order to sell. I think the bonds that were hypothecated were the first-mortgage bonds of the railroad Co., and not the State bonds.

Cross-examination by counsel for complainant:

170 Q. These bonds which are the subject of this suit, that you received from the State, was in consequence of a subscription made by the State to the stock in the Western North Carolina Railroad Co., was it?

(Objection by counsel for defendant, State of North Carolina, for the facts speak for themselves.)

A. The State made a subscription for stock in the Western North Carolina Railroad Co., and issued bonds to pay for the stock, that was an appropriation as I understand it, to the Western North Carolina railroad. The State made an appropriation of bonds to the Western North Carolina railroad, and of course it owned stock in the railroad to that extent.

Q. Doctor, the bonds you received, were they not received by you in payment of this stock heretofore subscribed by the State for stock in the Western North Carolina Railroad Co.?

(Objection — counsel for the defendant, State of North Carolina, because the receipts and statistics speak for themselves.)

A. I received the bonds as a subscription or appropriation rather to the Western North Carolina railroad.

Q. Do you not know that the State subscribed for stock in the Western North Carolina railroad as required by act of the General Assembly, and that when these bonds were delivered to you by the State treasurer, was it not in payment of the stock for which the State had subscribed by reason of the act of the General Assembly?

A. The State as I said appropriated bonds for the Western
171 North Carolina railroad, and I suppose this stock was intended to be payment for the bonds. The truth of the matter is, you know, in receiving the bonds they were received by other officers of the Co. than myself, that is: these bonds, and that nothing was said about stock in the matter. I took the bonds and sold them as an appropriation to the Western North Carolina railroad, as an officer of the Co., who is entitled to do that thing.

Q. Did you receive them as a donation by the State of North Carolina, or in payment of the stock to which the State had subscribed?

A. I suppose now they were given to the railroad in lieu of the stock.

Redirect examination by counsel for the defendant State of North Carolina:

Q. Can you say of your own knowledge or from any inspection you have made of the books of the Co. or any of them, that the State of North Carolina through any of its officers ever entered upon the books of the Co. a subscription for any stock whatever in that Co.?

(Objection by counsel for complainant, that the records and facts speak for themselves.)

A. I do not know of my own knowledge of it being done, I only know that the Co. or the State was represented in the Co., and voted a certain amount of stock.

Q. Did the Co. whilst you were its president ever receive from the State of North Carolina, through its treasurer or other officer, any money, the proceeds of the sales of State bonds issued under the act of Dec. 19th, 1866?

172 A. I received nothing but the bonds.

Q. Before receiving these bonds did you make any sealed bid for them, and file it with the treasurer of the State, or with the board of internal improvements of the State, or with any other officer of the State?

A. No not that I remember.

Re-recross-examination by counsel for defendant Charles Salter:

Q. You say that the Co. got nothing from the State for the stock but the bonds?

A. Nothing but the bonds. All I got from the State was the bonds.

Q. But you sold the bonds did you?

A. I sold the bonds.

Q. And you got the proceeds of the sale didn't you?

A. Yes.

Q. And the Co. got the money didn't it?

A. Yes, and I applied it to the debts of the company.

Q. Do you not remember that the governor of the State of North Carolina, for the State, appointed three-fourths of the directors in your company?

A. The majority of them, I forget the proportion.

Q. It was either three-fourths or two-thirds, was it not?

A. Somewhere along there.

Q. You were elected president by directors who were appointed by the State, were you not?

A. Yes.

173 Q. The State was entitled to these directors by reason of its being a large stockholder, having much more than a majority, was it not?

A. Yes.

Re-redirect examination by counsel for defendant State of North Carolina:

Q. Doctor, so far as the directors on the part of the State were concerned, do you know anything except what was authorized and required by the charter of the company?

A. No.

J. J. MOTT.

Subscribed to this — day of November, 1902.

—— ——.

H. C. Cowles, witness produced on behalf of the defendant, State of North Carolina, being first duly sworn, deposes and says, in answer to the interrogatories propounded to him by counsel for defendant, State of North Carolina, as follows:

Q. Mr. Cowles, what is your occupation?

A. I am clerk in the circuit and district courts of the western district of North Carolina.

Q. What connection did you sustain in the Western North Carolina railroad?

A. I was agent a while, conductor a while, and then sec'y and treasurer.

Q. Covering what period were you secretary and treasurer?

174 A. From April 1869, to May 1871, according to my recollection.

Q. As such did you have the custody of the records, books of the said railroad Co.?

A. Yes sir.

Q. Please state what book it is that you have in your hand.

A. These are the printed reports of the officers and accounts of the Co., so far as they are related to the transactions, as receipts and disbursements of the funds of the Co., and reports of the officers.

Q. I wish you would turn, if you can, to parts that are contained in the report of Sam'l McD. Tate as president, with reference to the sale of said bonds.

(Objected to by counsel for defendant, Charles Salter, as being immaterial.)

A. Col. Sam'l McD. Tate was president prior to Dr. Mott for about a year, and Dr. Mott served about four years as president, and Col. Tate was financial agent of the Co. Dr. Mott was elected president Aug. 28th, 1868. Col. Tate's accounts show that he received 1973 bonds of $1,000 each. Here is his report to the Co., commencing Sept. 19th, 1868, showing the sales of these bonds and the prices obtained from them.

Q. Just state the prices obtained from the bonds.

(Objection by counsel for the defendant, Charles Salter, and the complainant as being immaterial, irrelevant and impertinent.)

A. They run from 53 and 67⅝, in this report. There is
175 a subsequent report to this.

Q. When was that report made?

A. To August 26th, 1869, which reads as follows:

Sept.	19, 1868.	Int. ref'd N. Y. W. Co.			$175.00
Oct.	7, "	30 bonds sold		67	20,100.00
	19, "	108	"	67½	72,900.00
	" "	2	"	67⅝	1,352.50
	" "	5	"	67⅝	3,368.75
	" "	50	"	67½	33,750.00
	" "	4	"	67¼	2,690.00

Oct.	22,	1868.	1 bond	sold 67⅝	676.25
	"	"	5	" 67½	3,375.00
	24,	"	5	" 67½	3,362.50
	"	"	2	" 67⅝	1,347.50
	28,	"	10	" 66½	6,650.00
	29,	"	30	" 66¼	19,875.00
	"	"	21	" 66	13,860.00
Nov.	3,	"	2	" 67½	1,350.00
	"	"	10	" 65¼	6,525.00
	"	"	10	" 65	6,500.00
	16,	"	69	" 65	44,850.00
	"	"	20	" 64⅞	12,950.00
	17,	'69.	By loan discounted		49,375.00
	"	—.	"		49,308.56
	28,	—.	40 bonds sold Bk. Republic		25,684.92
	"	—.	30 bonds 64½		19,350.00
	"	—.	10 bonds 64¼		6,425.00
	"	—.	40 bonds 64		25,600.00
	"	—.	10 bonds 63¼		6,325.00
176	Dec. 4,	—.	3 bonds 64		1,920.00
	"	—.	10 bonds 63¾		6,375.00
	10,	—.	30 bonds 63		18,900.00
	"	—.	5 bonds 62⅝		3,137.50
	11,	—.	6 bonds 62		3,720.00
	14,	—.	15 bonds 62½		9,075.00
	"	—.	20 bonds 60		12,000.00
	"	—.	70 bonds 58		40,600.00
	15,	—.	35 bonds 60		21,000.00
	"	—.	10 bonds 60¼		6,025.00
	"	—.	Interest rec'd S. & Co		457.48
	"	—.	30 bonds 60¼		18,075.00
	"	—.	120 bonds 60		72,000.00
Dec.	16,	—.	Loan Shoe & Leather bank		49,375.01
	"	—.	25 bonds 62		15,500.00
	"	—.	5 bonds 61..		3,093.75
	"	—.	Interest rec'd Raleigh N. B		49.66
Jan.	18,	'69.	" "		632.80
	"	—.	" Patton & Co		18.75
	30,	—.	16 bonds 61½		9,840.00
	"	—.	30 N. C. R. R. bonds		24,400.00
Feb.	18,	—.	75 bonds 59		44,250.00
Mar.	8,	—.	Col. loan Ral. nat. bank		13,106.70
	"	—.	Int. A. & N. C. R. R. bonds		3,000.00
	8,	'69.	Interest T. W. D. & Co		320.19
	"	—.	Interest S. & Co		580.65
Apr.	1,	'69.	By 20 bonds 69½		11,900.00
	"	—.	10 bonds 59⅝		5,962.50
	23,	—.	113 bonds sold by Bk. Rep		60,182.50
May	1,	—.	34 N. C. R. R. bonds		28,900.00
	"	—.	Interest on same		1,360.00
177	"	—.	5 N. C. R. R. bonds		4,250.00

Jul-	1,	—.	Int. on A. & N. C. R. R. bonds.....	3,000.00
	"	—.	50 bonds 53¼.....	26,625.00
	"	—.	30 bonds 53¼.....	15,975.00
	"	—.	5 bonds 53½.....	2,675.00
	"	—.	10 bonds 53.....	5,300.00
	6,	—.	Int. col. of S. & Co.....	42.54
August	—,	—.	2 bonds 60.....	1,200.00

There is another report commencing with the balance on hand August 26th, 1869, and reads as follows:

Aug.	26,	1869.	To bal. on hand at last report				$50,083.16
Spt.	23,	—.	" sale 30 N. C. bonds			@ 45.....	13,500.00
Oct.	4,	—.	" " 18	"		@ 45.....	8,100.00
			" " 15	"		@ 44½.....	6,675.00
			" " 18	"		@ 43.....	7,740.00
			" " 5	"		@ 43½.....	2,175.00
			" " 10	"		@ 41¾.....	4,175.00
			" " 10	"		@ 41.....	4,100.00
			" " 2	"		@ 40½.....	810.00
Oct.	6,	—.	" " 78	"		@ 40.....	31,200.00
			" " 5	"		@ 42½.....	2,125.00
Nov.	16,	—.	" " 16	"		....	15,148.48
"	20,	—.	" " 13	"		.....	4,805.76
"	25,	—.	" " 14	"		.....	5,021.99
Jan.	31,	1870.	" " 25	"		@ 25.....	6,250.00
Feb.	1,	—.	" " 10	"		@ 25.....	2,500.00
	"	—.	" " 4	"		@ 24¾.....	990.00
178	"	—.	" " 5	"		@ 24⅝.....	1,231.25
	"	—.	" " 81	"		@ 24½.....	19,845.00
	"	—.	" " 30	"		@ 24⅛.....	7,237.50
	"	—.	" " 45	"		@ 24.....	10,800.00
April	23,	—.	" " 300	"		by Bk. Republic.....	70,000.00

Dr. Mott and I received 681,000 bonds in 1869, of which 340,000 were bonds similar to those in suit, issued under and act of December 19th, 1866, and they — disposed of in the manner, at the time and at the place contained in the following report, which reads as follows:

1869 & 1870.

July	12.	To sales thro' H. Clews & Co., 10,000 bs. @ 45c.....		$4,037.05
	"	To sales thro' H. Clews & Co., 5,000 @ 45½.....		2,043.52
	"	" thro' H. Clews & Co., 20,000 @ 45.....		8,074.10
	"	" thro' H. Clews & Co. 5,000 @ 45.....		2,018.52
	"	" thro' H. Clews & Co. 10,000 @ 45½.....		4,087.04

	"	"	thro' H. Clews & Co. 10,000 @ 45¼	4,062.04
179	"	"	thro' H. Clews & Co. 10,000 @ 45	4,037.05
March	8.	"	thro' H. Clews & Co. 8,000 @ 24	1,549.81
March	8.	To	sales thro' H. Clews & Co., 2,000 @ 24	387.45
	"	"	thro' H. Clews & Co., 10,000 @ 24	1,937.06
	"	"	thro' H. Clews & Co., 100,000 @ 20¾	16,122.92
April	—.	"	cash	91,391.67
June	—.	"	"	99,840.00
Jan'y	18.	"	thro' Soutter & Co., 10,000 @ 24	2,387.86
	"	"	thro' Soutter & Co., 50,000 @ 23¾	11,811.31
	"	"	thro' Soutter & Co., 15,000 @ 24	3,580.89
	"	"	thro' Soutter & Co., 15,000 @ 23½	3,505.89
	"	"	thro' Soutter & Co., 10,000 @ 23¾	2,362.26
March	5.	"	thro' Soutter & Co., 50,000 @ 20¾	10,311.46
July	29.	"	Bayne & Co., 241,000 @ 26	57,866.65
	"	"	Bayne & Co., 29,000 @ 26	7,564.80
September	—.	"	" 3,000 @ 23	547.44
	"	"	Tredegar Co., 68,000 bonds rec'd from S. McD. Tate	68,000.00
				$407,526.79

That report shows that the bonds received by Dr. Mott
180 from Mr. Tate were not sold by him.

Q. Mr. Cowles you have made a careful examination of the records in order to ascertain the prices at which these bonds issued under the act of December 19th, 1866, were sold have you not?

A. I have made a careful examination of the reports of the officers showing the bonds sold.

Q. What was the range of prices obtained by the company according to your recollection and best knowledge of these bonds turned over by the State to the Western North Carolina Railroad Co.?

(Objection by counsel for defendant, Charles Salter, because the question is irrelevant.)

A. From 67⅞ to as low as 23c.

Cross-examination by counsel for complainant:

Q. Did any of these second-mortgage bonds sell as low as 23c.?
A. That I do not know. Those sold at 23c. may have been the special-tax bonds.

It is stipulated by counsel that the annexed explanatory letter of witness be admitted as part of his testimony.

ED. S. BATTLE,
Commissioner.

181 Office United States court, western district of North Carolina, Statesville, N. C.; H. C. Cowles, clerk.

Nov. 14th, 1902.

Mr. Ed. S. Battle, commissioner, Raleigh, N. C.

My Dear Sir: I am in receipt of the transcript of my evidence. It makes me say that "Dr. Mott and I received $681,000 bonds in 1869, of which $340000 were similar to those in suit, issued under act of December 19th, 1866, and they were disposed of in the manner, at the time and prices contained in the following report, which reads as follows:" What I said was, that Mott and I received $613000 of bonds in 1869 &c. The $273,000 and $340,000, as charged in my acc't. The $68,000 was a transaction between Col. Tate and Dr. Mott, as I explained, and I had nothing to do with that, and my acc'ts do not show it. These bonds had been drawn by Tate from the treas'y before I became sec'y & treas., and were charged to him by the former treasurer, Mr. Simonton, and came over to me from him as part of the balance due from Tate.

If the answer showed that $613000 was received by us, instead of $681000, it would be correct; the next question and answer explains, as well as the report, as to the $68,000, and how Mott got them.

182 Can't this change be made.

Governor Russell also asked me, if I was present at the sales or something of that kind, and I answered no, as I was not present, that does not appear.

But, I suppose — is not material.

Yours truly,

H. C. COWLES, *Clerk.*

Daniel L. Russell, witness produced in behalf of the defendant, State of North Carolina, being first duly sworn, deposes and says, in answer to the interrogatories propounded to him by counsel for defendant, State of North Carolina, as follows:

Q. You were governor of the State of North Carolina during the years of 1897, 1898, 1899 and 1900?
A. Yes sir.
Q. You were a practicing attorney?
A. Yes sir.

Q. You are counsel of record in the present case for Charles Salter, one of the defendants, are you not?

A. Yes.

Q. When were you first consulted professionally about this case, Governor?

(Objection on part of counsel for complainant, because it is immaterial, irrelevant and hearsay.)

A. Well, I think it was in March, 1901.

183 Q. Whom by?

(Objection on part of counsel for complainant because it is immaterial, irrelevant and hearsay.)

A. By Mr. Ricaud, who associated me with himself.

Q. Who was he appearing for?

(Same objection on part of counsel for complainant.)

A. The second-mortgage bondholders.

Q. Was he not, and were you not employed by Schaeffer Bros. to assist them in the collection of their bonds held by them of the class sued on in this cause?

(Same objection on part of counsel for complainant.)

A. Mr. Ricaud was employed by them, and Mr. Ricaud afterwards requested me to join with him in representing them, and I did so as his associate.

Q. Were you consulted by Mr. Ricaud about the collection of these bonds prior to March 1901?

(Same objection on part of counsel for complainant.)

A. No, I was not consulted with by him professionally at all.

Q. He informed you some time previous to that, that he had been employed by Schaeffer Bros. to attempt to collect these second-mortgage bonds, did he not?

(Same objection on part of counsel for complainant.)

A. He informed me some time, I think during the year 1900, that he was employed by Schaeffer Bros. and that he intended to bring a suit in the supreme court of North Carolina, under the claims clause in the North Carolina constitution, and afterwards he and Mr. Busbee informed me that they proposed to memorialize the

184 legislature, and my recollection is that they presented to me, as governor, a memorial, and requested me to transmit it to the legislature, and I told them that they might as well send it direct to the legislature.

Q. Do you know about when Mr. Wheeler H. Peckham was employed in this cause?

(Same objection on part of counsel for complainant.)

A. No, I do not know.

Q. Do you have any knowledge whether Mr. Peckham was con-

sulted with reference to bringing this action in the Supreme Court prior to or during the month of March 1901?

(Same objection on part of counsel for complainant.)

A. I do not.

Q. Do you know whether Mr. Peckham was employed at the suggestion of Mr. Ricaud?

(Same objection on part of counsel for complainant.)

A. I will answer this question by saying that I do not remember that it was at Mr. Ricaud's suggestion, and hardly think it was, but it may have been, and I will further say that although I have chosen to answer the question that I do not admit that it is competent, because it involves communications and transactions between the attorneys and the attorn*ies* and clients which are privileged. I will further state since thinking a little further about one of your former questions that my impression is that Mr. Peckham was employed, or consulted with regard to these second-mortgage bonds some time in March 1901.

Q. Did you consult the Schaeffer Bros. or either of them, or
185 any one representing them about the feasibility of bringing a suit on these second-mortgage bonds in the Supreme Court of the United States?

(Same objection on part of counsel for complainant.)

A. While I hardly think I would have consulted with them, as I do not believe they would have known what I was talking about, but if they consulted with me, or if you mean to ask if there were consultations between us, I answer that they were the consultations of attorney and client, and as such they were privileged, and that being privileged I would have no right to divulge them, certainly no such right, unless the privileges were wa-ved by the client. I, therefore, decline to answer the question.

Q. Have you been employed as counsel for the State of South Dakota?

(Same objection on part of counsel for complainant.)

A. No sir.

Q. Are you of counsel at all for the State of South Dakota?

A. No sir.

Q. Are you of counsel for any party in this suit other than Salter?

(Same objection on part of counsel for complainant.)

A. You know very well, Judge Merrimon, that Salter is a representative of a class in this suit, and that class is the second-mortgage bondholders. Salter & Salter represent a class, and I, with my associate represent Salter.

Q. Then you do not appear in this suit for all the second-mortgage bondholders?

(Same objection on part of counsel for complainant.)

186 A. Well, I appear for such of them as are represented. I appear for them so far as Salter can represent them.

Q. And the bonds held by the complainant in this suit are of that character, second-mortgage bonds?

A. Yes, they are second-mortgage bonds.

Q. So that the parties for whom you appear and the complainant in this suit have a common cause against the State of North Carolina?

(Same objection on part of counsel for complainant.)

A. All that is a matter of law, and the question is answered by the general law and the pleadings in this case.

Q. Do you know the fact that Mr. Ricaud appears for the State of South Dakota?

(Same objection on part of counsel for complainant.)

A. I do not.

Q. Have you heard him say he did or did not?

(Same objection on part of counsel for complainant.)

A. Well I am very sure that he does not.

Q. You were not of counsel for any one of course, when you were governor of the State?

(Same objection on part of counsel for complainant.)

A. No sir.

Q. I ask you then if in the conversations which occurred between you and Ricaud and Mr. Busbee while you were governor of the State, with reference to the memorial of the Schaeffers to the General Assembly of the State, it was not stated by one of the other of them that in the event that they were not successful of the memorial, and could not sue in the supreme court of the State,

187 steps would be taken by the Schaeffer Bros. to have a suit brought by some State in the Supreme Court of the United States against the State of North Carolina on these bonds?

(Same objection on part of the counsel for complainant.)

A. I think not.

Q. Did you not hear that question discussed at that time between Mr. Ricaud and Mr. Busbee or any one else?

(Same objection on part of counsel for complainant.)

A. Well, it is possible that there may have been something said about the rights of sovereign to bring suits, just as lawyers would discuss a question, but my recollection is that these gentlemen in all their talk with me were contemplating a suit in the supreme court of North Carolina, and that they afterwards then abandoned that a little while before the legislature met in 1901, and made their memorial.

Q. Do you know who suggested to Simon Schaeffer Bros. the policy

of donating ten of these bonds to the State of South Dakota, or any other State, or any other number of bonds, with a view to acquiring a jurisdiction in the Supreme Court of the United States against the State of North Carolina for the collection of these second-mortgage bonds?

(Same objection on part of counsel for complainant.)

A. I do not know of any suggestions or advice having been given by to Schaeffer or any one other than their counsel, and such advice or suggestions are privileged, and if I knew I would not answer.

Q. If you were not of counsel for Schaeffer Bros. yourself,
188 how could any knowledge which you have of that matter be considered privileged?

(Same objection on part of counsel for complainant.)

A. I have already said I was counsel for the second-mortgage bondholders.

Q. But you said that you were employed in March 1901, and the question is did you know of this scheme prior to that date?

(Same objection on part of counsel for complainant.)

A. I did not know of their doing this or their making the donation or intending to make it until about that time.

Q. Do you mean to say then that you did know it about March 1901?

(Same objection on part of counsel for complainant.)

A. Oh, I knew it when they did it, or about the time that they did it.

Q. Was not this scheme discussed in your presence prior to March 1901?

(Same objection on part of counsel for complainant.)

A. Well if it was, it was between attorneys or between attorneys and clients.

Q. Well, but it could not have been between yourself and your client if you were not employed before March 1901. Then if you had knowledge of it, what knowledge you had is not privileged under the law, and I ask you to state whether you had such knowledge prior to that date?

(Same objection on part of counsel for complainant.)

A. Oh, I don't think I had such knowledge until about that
189 time, either about the time when I accepted the employment from Mr. Ricaud which was about March 1901.

Q. Have you not personal acquaintance with Congressman Burk of South Dakota?

(Same objection on part of counsel for complainant.)

A. Yes.

Q. When did you form his acquaintance?

(Same objection on part of counsel for complainant.)

Q. Whilst you were governor or afterwards?

A. Oh, I think I first met him along about the spring or summer of 1901, possibly the fall.

Q. Then you did not know Mr. Burk before you were employed in this case?

(Same objection on part of counsel for complainant.)

A. I don't think I did.

Q. Is Mr. Burk a law-er?

(Same objection on part of counsel for complainant.)

A. I think he is but I am not sure.

Q. Did you ever talk with Senator Butler at any time with regard to this suit, and if so when?

(Same objection on part of counsel for complainant.)

A. Oh, yes sir, I think I have had talks with him about it. Well in 1901 and 1902.

Q. Did you talk with Senator Butler in regard to a suit against North Carolina to recover these second-mortgage bonds, prior to March 1901?

(Same objection on part of counsel for complainant.)

A. It is possible that I did, or thereabouts, possibly in February, or along about then possibly.

190 Q. I ask you if you did not acquire information from Senator Butler prior to the time you were employed as counsel to this case, that it was in contemplation to so place some of these second-mortgage bonds as to give some State an opportunity to sue the State of North Carolina in the Supreme Court of the United State-, under the constitution authorizing suite by one State against another to recover these bonds?

(Same objection on part of counsel for complainant.)

A. No I do not think he ever gave me that information.

Q. Did you, prior to March 1901 receive information from any source whatever that it was in contemplation by any parties whatever, to so place some of the second-mortgage bonds as to enable one State or some States to sue the State of North Carolina to recover the second-mortgage bonds?

(Same objection on part of counsel for complainant.)

A. Well I cannot undertake to give particular dates, I say generally in and about March 1901—it may have been February—it may have been April. I have already said that I was employed as counsel in this case in and about March 1901. I may have meant by that that I entered into an arrangement with Mr. Ricaud. I had an understanding with him about that time which gave me employment as counsel with him as his associate about that time. Well

that may have been in Feb.—it may have been a month before March 1901. The reason why I say March 1901 is, because I have a distinct recollection of going to New York in or about 1901, and being there, and going there for that purpose, that is why I say
191 March 1901. The employment may have been before that.

Q. Did you have any information from any source whatever, from any parties whatever prior to the time you were employed as counsel for any of the holders of the second-mortgage bonds, that it was in contemplation by any parties or persons whatever to so place a portion of the said mortgage bonds as to enable some State to bring action, or a suit in the Supreme Court of the United States against the State of North Carolina to recover the said second-mortgage bonds?

(Same objection on part of counsel for complainant.)

A. Oh, I might have heard some such talk, the matter was discussed' I remember having some talk with Mr. Busbee about it, well I guess that was in March too, or April 1901.

Q. Do you know at whose suggestion a bill was introduced in the legislature of South Dakota in 1901, to enable that State to accept or receive a gift of any of the second-mortgage bonds, or of any bonds, and what the purpose of that bill was?

(Same objection on part of counsel for complainant.)

A. Oh, I think I heard Col. Stewart of South Dakota, and possibly Mr. Burk say that they had the bill introduced, or that one of them had introduced it, or something of that sort.

Q. I will ask you if you did not at the same time learn that the chief purpose of that act was with a view to receive from the Schaffers a donation of the bonds now in suit, and with a view of bringing a suit against North Carolina to recover?

192 (Same objection on part of counsel for complainant.)

A. Oh, it is not improbable that such an inference was made, it may be that such conclusion was inferential from what they said.

Q. Do you know, Governor, that the bill was going to be introduced in the legislature of South Dakota before it was done?

(Same objection.)

A. I think I did hear it mentioned.

Q. Did you know that Simon Schaeffer was going to donate ten bonds to the State under that bill?

(Same objection.)

A. Did I? No, sir. I did not know that he was going to do it, and indeed I am quite sure, or I have reason to believe at least that he was not willing to do it until about March 1901.

Q. Well did you know why Simon Schaeffer was not willing to do it before that date?

(Same objection.)

A. Well yes, I knew. I know what he said, but I shall not state what he said for reasons already given.

Q. Governor, whilst you were governor, and about the 30th of Oct. 1900, do you remember that there were certain bonds filed with the State treasurer of what are called here second-mortgage bonds, to be exchanged under the act of 1879, by a man named Lichtenauer of New York, and that after these bonds had been cancelled and the new bonds prepared, a despatch was sent either to yourself as governor or to Mr. Worth as State treasurer, recalling these bonds?

193 (Same objection.)

A. Yes I remember the incident, yes sir I think I advised Mr. Denmark to make that record, or Mr. Worth.

Q. Look upon the paper handed you and see whether or not you think that it correctly represents what transpired in relation to that transaction?

(Same objection.)

A. I think it is. My recollection is that Mr. Ricaud, I think it must have been I do not think it could have been Mr. Lichtenauer as I never have seen him, telegraphed me and asked me to see Mr. Worth and get Mr. Worth to hold up the funding of certain bonds as the owner of them would probably want them withdrawn, and I think I showed Mr. Worth the telegram perhaps, or asked him to hold them up until he got orders from the owner, for some time after that I suppose perhaps I might have been out of the governor's office or out of Raleigh, might not have thought of it, or something. Mr. Worth mentioned to me something about it and I asked him to hold it up until he could hear from the party who had telegraphed me, and a few days after that a telegram came to Mr. Worth asking him to return the bonds. I think he brought me the telegram perhaps and said that he had already cancelled the bonds. I told him that it made no difference that the owner of the bonds was entitled to withdraw them if he wanted to at any time before the new 4% were issued, that I thought he had a right in law to do that, and besides the State did not care to grab a man's bonds and try to hold him to a contract that was without consideration against his will and I thought he ought to
194 return the bonds with the certificate on each bond showing why it had been cancelled, and I think I went into Mr. Worth's office with him, and perhaps at his request I dictated that certificate. I think Mr. Denmark took it down in pencil on a piece of paper, and I presume that he afterwards put it on each one of the bonds, and I think I said to Mr. Denmark, or to Mr. Worth, or to both of them, that he had better make a record of that on his bond book, which it seems that he did by this record which you produce now.

(Paper offered to witness, see Exhibit H.)

Q. Can you now recall from whom the second telegram mentioned in your last answer came from?

(Same objection.)

A. My impression is that Mr. Worth had a telegram from the owner himself, Lichtenauer.

Q. Did you at that time know that Mr. Ricaud was associate counsel in this case. *Was counsel for the* second-mortgage bondholders?

(Same objection.)

A. Why, yes, I think I did.

Q. Do you know now that these eight bonds are now held and owned by Schaeffer Bros., and if not by whom are they held?

(Same objection.)

A. I think they are held by John S. Armstrong of Wilmington, N. C.

Q. Do you not know that they went into the hands of Simon Schaeffer, or of Schaeffer Bros., when Lichtenauer parted with them?

(Same objection.)

195 A. I know that from having read the depositions in New York wherein Mr. Schaeffer stated that his brother Simon, I think, bought them from Mr. Lichtenauer.

D. L. RUSSELL.

Subscribed this — day of November, 1902.

Adjourned to Wednesday, December 3rd, 1902, at 10 a. m., at same place.

Taking of testimony resumed according to adjournment at 3 o'clock p. m., Dec. 3rd, 1902, same place.

Present: J. C. L. Harris, Esq., counsel for complainant, Daniel L. Russell, Esq., counsel for defendant, Charles Salter, James H. Merrimon, Esq., George Rountree, Esq., & James E. Shepherd, Esq., counsel for defendant, State of North Carolina.

(Defendant, Simon Rothchilds, not being present either in person or by counsel.)

196 FABIUS H. BUSBEE, a witness produced in behalf of the defendant, State of North Carolina, being first duly sworn, deposes and says, in answer to the interrogatories propounded to him by counsel for defendant, State of North Carolina, as follows:

Q. What is your name, age, residence and occupation?

A. Fabius H. Busbee, age fifty-four, occupation a lawyer, residence Raleigh.

Q. Are you counsel, or of counsel for any of the parties to this suit?

A. I am not. I represented the owners of these second-mortgage bonds before the North Carolina judiciary committee of the General Assembly of 1901, in joint session. I do not appear in the present litigation.

Q. Please explain what you mean by "second-mortgage bonds"?

A. The bonds sometimes called the ten-share bonds for identification, issued in aid of the Western North Carolina railroad, under the acts of 1855 and December 1866, secured by a pledge of ten shares of the stock of the North Carolina railroad. The bonds were authorized to be issued under the act of 1855, and under the act to enhance their value, passed in 1866, ten shares of stock in the North Carolina Railroad Co. were pledged for the security of each bond. The acts of 1855 referred to, are the charter of the Western North Carolina Railroad Company, and the acts amendatory thereto.

Q. Have you read the bill of complaint in this suit?

A. I do not remember whether I have read it; probably
197 cursorily. I do not recall its allegations.

Q. Did you file a petition or a memorial before the committees of the judiciary of the respective houses of the General Assembly of 1901, on behalf of any of the holders of these bonds? If you say you did, please state on whose behalf, and whether the petition set forth the bonds mentioned in the answer to your previous question?

A. I did present such petition, and made an effort to secure an adjustment of the bonds,—that is the bonds alluded to in my answer. The bonds are set out in the petition, and I am informed a copy of the petition has been filed. My employment to represent these bondholders was through A. G. Ricaud, Esq., of New York, formerly of Wilmington, N. C., and all my correspondence was with him.

Q. Did Mr. Ricaud tell you who he represented?

(Objection by counsel for defendant Charles Salter, because the question is irrelevant and immaterial.)

A. He represented a majority of the holders of the bonds. I understood from him that he represented the holders of the majority of the bonds above referred to, being probably counsel for Schaeffer Bros., as the chief representatives of such bondholders.

Q. Did you see, and confer personally with Schaeffer Bros., or with either of the firm of Schaeffer Bros. at any time whilst you were counsel?

(Objection by counsel for defendant, Salter, because question is irrelevant and immaterial.)

A. My impression is—my recollection is that I did not dur-
198 ing the session of the General Assembly. I have known Schaeffer Bros. for many years, but saw them very rarely. If I saw either one, during the time that I was representing them, it was socially, and my recollection is that no legal and business matters were discussed. My instructions and consultations were with Mr. Ricaud.

Q. Well, was Mr. Ricaud in Raleigh at the time the petition was presented to the committees on judiciary of the General Assembly?

(Same objection by counsel for defendant, Salter.)

A. I think not.

Q. Was he in Raleigh at any time during the sitting of that General Assembly?

(Same objection by counsel for defendant, Salter.)

A. I am inclined to think he was, but my recollection is not clear.

Q. Do you remember to have seen him and talked with him at any time during the sitting of the General Assembly, or about that time, either before or after?

(Same objection by counsel for defendant Salter.)

A. I probably did, but I cannot separate at this distance of time conferences in person from those by correspondence.

Q. Do you know how long Mr. Ricaud has been living in New York?

(Same objection by counsel for defendant Salter.)

A. Several years—exactly how long, I cannot remember.

Q. Do you know whether he is in partnership with any lawyers of this State?

199 (Same objection by counsel for defendant, Salter.)

A. I do not think he has any partners in this State. I have talked with him freely about his New York prospects and his business, and he has never made any reference to a North Carolina partnership, although the conversation was such as to bring forth that information, if it be true.

Q. Did he at any time communicate to you either verbally or in writing, a plan or scheme whereby it was intended to donate any portion of the bonds that you have described in your previous answer to some State of this Union, with a view to having this suit brought, to enforce the collection of these bonds?

(Question objected to by counsel for complainant on the grounds of its being immaterial and hearsay.)

A. I hardly think counsel would expect me to answer a question involving communication between counsel and client, because if such conversation had occurred, it would be unprofessional for me to reveal it. As no such conversation did occur, however, I can freely answer he did not.

Q. Did you have any knowledge from any source whatever at any time, that such a plan was in contemplation by any of the holders of the bonds referred to in your previous answer?

(Objection by counsel for defendant Salter, because question is immaterial and irrelevant.)

A. The same answer applies. I could have obtained such knowledge only as counsel, and professional honor would prevent me
from answering, but I had no such knowledge. I knew that
200 the bondholders, some of whom said they had paid more that 60c. on the dollar for their bonds, and who had received

nothing from the State for nearly thirty years felt that they had not been treated with the consideration which an honest State owed an honest creditor, and I think they would have taken any honest means to have secured the collection of a part of their debt. I did state to Governor Aycock that I thought the bondholders would do something—what it was, I did not know.

Q. Will you please give the names of those of the holders of the bonds referred to, who claim to have paid 60c. on the dollar for the same, and who you had reason to believe, and so communicated to the governor, would take steps to enforce the collection of the bonds?

(Same objection by counsel for defendant, Salter.)

A. I did not say I had reason to believe they would take steps to enforce the collection of their bonds. One of the Schaeffer Bros. told me that they had paid over 60 % for a part of their holdings of bonds. They are much the largest holders of bonds, I am informed.

Q. Did you ever suggest to any one the feasibility of making a donation of bonds to some State, with a view to having that State sue the State of North Carolina in the Supreme Court of the United States for the purpose of testing the question of whether such a plan could be successfully carried out, and the second-mortgage bonds in that way collected from the State, or the stock owned in the North Carolina Railroad Co. made available for such purposes? If you ever made such suggestion to any one, please state to whom and when.

201 (Question objected to by counsel for complainant, on the ground that it is hearsay and immaterial.)

A. Counsel asks a question, which if the answer was in the affirmative, if he were upon the witness stand, he would be the last to give, as he would not reveal anything which he had stated to his client under the inviolate seal of professional confidence. I did not make such suggestion directly, or indirectly, and therefore, I can properly answer the question.

Q. Did you see a draft of a bill intended to be introduced into the legislature of South Dakota to be entitled "An act to require the acceptance and collection of drafts, devises and bequests, donations and assignments to the State of South Dakota" before the said bill was introduced in the said State, or became a law? If you say you did, please state what you know about such bill.

(Objection by counsel for defendant Salter, because question is immaterial & irrelevant.)

A. I could have seen such bill only in my capacity as counsel, I did not see it.

Q. Did you have any knowledge that any such bill would be introduced into that legislature, acquired from any one other than some one who had employed you as counsel?

(Same objection by counsel for defendant, Salter.)

A. I did not.

F. H. BUSBEE.

Subscribed before me this — day of December, 1902.

202 WILLIAM H. WORTH, a witness produced in behalf of the defendant, Charles Salter, being first duly sworn, deposes and says, in answer to the interrogatories propounded to him by counsel for defendant, Salter, as follows:

Q. When were you treasurer of the State of North Carolina?

A. From January '95 to January 1901.

Q. I have handed you the bill of complaint in this case, and have requested you to read section 10, which is as follows:

"That during some twenty years after the so-called extension of the first-mortgage bonds by the agreement of 1880 (Exhibit C), the defendant State has been annually receiving dividends on its stock amounting to one hundred and eighty thousand dollars a year ($180,000), while the annual interest on the first-mortgage bonds has amounted to the sum of one hundred and sixty-three thousand two hundred dollars ($163,200), thus leaving an excess of sixteen thousand eight hundred dollars ($16,800) per annum for the period of twenty years, making a total of three hundred and thirty-six thousand dollars ($336,000), which has been covered into the general fund of the State treasury and has been used for the ordinary expenses of the State. And the State is now receiving dividends on its stock paid semi-annually at the rate of two hundred and ten thousand dollars ($210,000) a year, while the annual interest on the first-mortgage bonds is one hundred and sixty-three thousand two hundred
203 dollars, (163,200) a year thus showing forty-six thousand eight hundred dollars ($46,800) a year in excess of the interest on the first-mortgage bonds, which forty-six thousand eight hundred dollars ($46,800) the defendant State refuses to pay over to the second mortgagees, notwithstanding their manifest rights to this fund on the facts hereinbefore recited."

Have you read it?

A. I have.

Q. Please state whether the allegations of that section are correct or not?

A. I know they are so far as the administration that I was in from 1895 to 1901.

WILLIAM H. WORTH.

Subscribed to before me this — day of December, 1902.

THE UNITED STATES OF AMERICA,
State of North Carolina, City of Raleigh.

I, Ed. S. Battle, duly appointed by stipulation and agreement of counsel under an order issued from this court, (stipulation & order being hereto attached) commissioner to take depositions in the State of North Carolina in the above-entitled cause, do hereby certify that

the foregoing depositions were duly taken in accordance with the stipulation of counsel in this cause as above set forth; that the depositions were taken by question and answer: that said
204 depositions were taken down in shorthand by a stenographer, and typewritten transcript made therefrom: that said depositions were signed by the deponents as provided for in the foregoing stipulation: that the deponents were first duly sworn to tell the truth, the whole truth and nothing but the truth: that the depositions were taken in the office of the attorney general of the State of North Carolina in the city of Raleigh on the 6th day of November, 1902, and continued on the 7th of November, and on the 3rd of December next following, as above set forth, when finished: that the several parties to the cause were represented by counsel, as above set forth: that the several exhibits recited were offered in evidence: that the copies of the laws put in evidence are true and accurate copies of the same. I further certify that I am not counsel or relative to any party to this cause, or otherwise interested in the event of this suit.

ED. S. BATTLE,
Commissioner to Take Evidence in State of North Carolina.

Supreme Court of the United States, October Term, 1901.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA ET AL. } No. 11.

Ordered, that the testimony in this case be taken orally, in
205 the same manner as provided for the taking of testimony in the circuit courts of the United States, sitting in equity, by rule 67 of the rules of practice in equity promulgated by this court, and that any persons or persons, duly authorized by law to take testimony, agreed upon by the parties to this case, not in default for want of an answer, may take such testimony, the same as if he had been specially appointed by this court commissioner to do so, and that in default of such agreement any justice of this court may appoint a commissioner or commissioners for that purpose; that one or more persons or commissioners may be selected or appointed each to take testimony in any named locality and each to act as if he were sole commissioner; that the time to take such testimony is limited to the first day of October next, and that the same be returned to this court and filed with the clerk thereof on or before the first Monday of October, 1902.

Per MR. CHIEF JUSTICE FULLER.

May 19, 1902.

True copy.

[Seal of the United States Supreme Court.]

Test: JAMES H. McKENNEY,
Clerk Supreme Court U. S.

(Endorsed:) (Copy) Supreme Court U. S. No. 11 or'g'l. October term, 1901. The State of South Dakota, compl't *vs.* The State of North Carolina, *et al.* Order to take testimony. Filed May 19, 1902.

206 The Supreme Court of the United States.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES Salter, and Simon Rothschild, Defendants. } No. 9, Original.

It is agreed that Ed. S. Battle of Wilmington N. C. shall be appointed commissioner to take depositions in the State of North Carolina.

Any party to this suit shall be entitled to take depositions before said commissioner on ten (10) days' notice to the other party to this suit, or to their solicitors or counsel.

WHEELER H. PECKHAM,
Of Counsel for Compl't.
R. D. GILMER, *Att'y Gen'l.*
JAMES E. SHEPHERD,
Of Counsel for State of North Carolina.
D. L. RUSSELL,
Of Counsel for Defendant Charles Salter.

Endorsed: Supreme Court U. S. October term, 1902. Term No. 9, orig'l. The State of South Dakota, complainant, *vs.* The State of North Carolina *et al.* Stipulation to appoint E. S. Battle,
207 commissioner to take depositions. Filed Aug. 30, 1902.

A true copy.
Test:

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

208 EXHIBIT A.

LAWS OF 1854–'55, CHAPTER 228.

An act to incorporate the Western North Carolina Railroad Company.

SEC. 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That for the purpose of constructing a railroad to effect a communication between the North Carolina railroad and the valley of the Mississippi, the formation of a corporate company, is hereby authorized under the name and style of the Western North Carolina Railroad Company, and when formed in compliance with the condi-

tions hereinafter prescribed, shall have a corporate existence as body politic for the term of ninety-nine years.

SEC. 2. Be it further enacted, That the said company shall have power to construct a railway with one or more tracks from the town of Salisbury, on the North Carolina railroad, passing by or as near as practicable to Statesville, in the county of Iredell, to some point on the French Broad river beyond the Blue Ridge, and if the legislature shall hereafter determine, to such point as it shall designate at a future session.

SEC. 3. Be it further enacted, That for the purpose of creating the capital stock of said company, the following persons be and they are hereby appointed general commissioners, viz: E. J. Erwin, Wm. M. Shipp, John F. Hoke, Wm. A. Lenoir, John I. Shaver, Samuel
209 F. Bell, and John Wilfong, and books for receiving subscriptions for the capital stock aforesaid shall be opened at the following places, and under the directions of the following persons, to wit: At Salisbury under the direction of J. W. Ellis, D. A. Davis, J. H. Jenkins, Wm. Murphy, A. Henderson, or any three of them; at Lincolnton L. E. Thompson, C. C. Henderson, H. W. Guion, Wm. J. Hoke, and Henry Cansler or any three of them; at Newton, M. L. McKorkle, George Setzer, Jonas Bost, Dr. Campbell, and George Wilkie, or any three of them; at Statesville, R. F. Simonton, J. F. Alexander, C. A. Carleton, A. M. Jamison, W. P. Caldwell, or any three of them; at Taylorsville, A. C. McIntosh, W. G. James, R. Watts, Alfred Carson, Devault Little, or any three of them; at Morganton, J. J. Erwin, R. C. Pearson, C. M. Avery, James M. Smyth, Thomas G. Walton, or any three of them; at Marion, Samuel Deal, J. C. Whitson, J. S. Brown, A. Higgins, Logan Burgin, or any three of them; at Rutherfordton, William Miller, Robert Twitty, Edmund Bryan, O. Bartlett, David Miller, or any three of them; at Shelby, Wm. T. Miller, Doct. Thomas Williams, Albert Holmsby, Wm. Green, A. W. Benton, or any three of them; at Mocksville, B. Bailey, A. M. Booe, Thos. M. Young, J. F. Martin, E. Gaither, or any three of them; at Asheville, N. W. Woodfin, James W. Patton, James M. Smith, W. W. McDowell, Montraville Patton, or any three of them; at Hendersonville, John Baxter, V. Ripley, D. B. Miller, J. H. Allen, M. M. Patton, or any three of them; at Lenoir, under the direction of C. C. Jones, R. B. Bogle, E. P. Miller, W. W. Lenoir, and James Harper, or any three of them; at Boone, under the direction of Johnathan Horton, Jordan Council, George N. Foulke, John Horton, and E. F. Clewell, or any three of them.

210 SEC. 4. Be it further enacted, That all persons who are or may be hereafter authorized to open books for subscription of stock by the commissioners herein appointed for that purpose, shall open said books at any time after the ratification of this act, twenty days' previous notice being given in some one or more of the public newspapers in this State, and that said books when opened, shall be kept open for the space of thirty days at least, and as long thereafter as the commissioners first above named shall direct; and that all subscriptions of stock shall be in shares of one hundred dollars, the subscribers paying at the time of making such subscriptions, the

amount of five per cent. on the same, to the person or persons authorized to receive such subscriptions, and in case of failure to pay said sum, all such subscriptions shall be void if the commissioners choose to so declare it, or they may direct it to be recovered by suit or otherwise, and upon closing the books, all such sums as shall have been thus received of subscribers on the first cash installment, shall be paid over to the general commissioners hereinbefore mentioned, by the persons receiving them, and for failure thereof, such person or persons, shall be personally liable to said general commissioners, before the organization of said company, and to the company itself, after its organization, to be recovered in the superior court of law within this State, in the county wherein such delinquent resides, or if he resides in any other State, then in any court in such State having competent jurisdiction; that the said general commissioners shall have power to call on and require all persons empowered to receive subscriptions of
211 stock at any time, and from time to time as a majority of them may think proper, to make a return of the stock by them respectively received, and to make payments of all sums made by the subscribers; that all persons receiving subscriptions of stock, shall pass a receipt to the subscriber or subscribers, for the payment of the first installment, as heretofore required to be paid, and upon their settlement with said general commissioners aforesaid, it shall be the duty of said general commissioners in like manner, to pass their receipt for all sums thus received, and such receipts shall be taken and held to be good and sufficient vouchers for the persons holding the same.

SEC. 5. Be it further enacted, That it shall be the duty of said general commissioners, to direct and authorize the keeping open of books for the subscription of stock in the manner above described, until the sum of three hundred thousand dollars, shall have been subscribed to the capital stock of said company, and the said commissioners or a majority of them, shall sign and seal a duplicate declaration to that effect, with the names of the subscribers appended, and cause one of the said duplicates to be deposited in the office of the secretary of state.

SEC. 6. Be it further enacted, That whenever the sum of three hundred thousand dollars ($300,000) shall be subscribed in manner aforesaid; the subscribers, their executors, administrators and assigns, shall be, and are hereby declared to be incorporated into a company by the name and style of "The Western North Carolina Railroad Company," and by that name, shall be capable in
212 law an- equity, of purchasing, holding, leasing and conveying estates, real, personal and mixed, and of acquiring the same by gift or devise, so far as shall be necessary for the purposes embraced within the scope, object and intent of this charter, and no further, and shall have perpetual succession, and by their corporate name, may sue and be sued, plead and be impleaded in any court of law and equity in the State of North Carolina, and may have and use a common seal, which they may alter and renew at pleasure, and may have and enjoy all other rights and immunities, which other

corporate bodies may, and of right do exercise, and may make all such by-laws, rules and regulations as are necessary for the government of the corporation, or for effecting the object for which it is created, not inconsistent with the constitution and laws of the State of North Carolina.

SEC. 7. Be it further enacted, That as soon as the sum of (300,000) three hundred thousand dollars shall have been subscribed in the manner aforesaid, it shall be the duty of the general commissioners appointed herein to appoint a time for the stockholders to meet at Salisbury which they shall cause to be previously published for the space of thirty days in one or more newspapers, as they may deem proper, at which time and place the said stockholders, in person or by proxy, shall proceed to elect four directors of the company, and to enact all such by-laws, rules and regulations as may be necessary for the government of the corporation and the transaction of its business; the persons elected directors at this meeting shall serve for the term of one year, and at this meeting the stockholders shall fix on the place or places where the sub-
213 sequent election of directors shall be made; but if the day of annual election should pass without any election of directors, the corporation shall not thereby be dissolved, but it shall be lawful on any other day to hold and make such election, in such manner as may be prescribed by the rules and by-laws of the corporation.

SEC. 8. Be it further enacted, That whenever it shall appear to the board of internal improvements of this State by a certificate signed and sealed by said general commissioners or a majority of them that the sum of three hundred thousand dollars has been subscribed for and taken, and the five per cent. paid in thereon, the said board of internal improvements shall be and they are hereby authorized and required to direct the treasurer of the State to subscribe on behalf of the State for the stock in said company to the amount of six hundred thousand dollars in the capital stock of said company.

SEC. 9. Be it further enacted, That upon the subscription of six hundred thousand dollars as hereinbefore provided, by the treasurer, under the direction of the board of internal improvements, the State shall appoint eight directors in said company, who shall be appointed by the governor, by and with the advice and consent of the council of State.

SEC. 10. Be it further enacted, That as soon as the company shall be organized as aforesaid, the board of directors shall proceed to locate and have constructed as speedily as possible, on the route they may deem best, a railroad with one or more tracks, to be used with steam power, which may thereafter be extended in the manner hereinafter provided, (from) the town of Salisbury, on the North Carolina
214 railroad, connecting with the same, and of the same guage, and proceeding westward to the terminus aforesaid, and as soon as the first division of said road shall have been completed, it shall be equipped for the transportation of passengers and freight, and all necessary warehouses, water stations, and buildings shall be erected, so that such division shall be put in full operation before the State shall be called upon to subscribe any further sum; and two-thirds

of the net proceeds of such part so completed shall be paid into the treasury semi-annually, to be applied in discharge of the interest on the bonds issued by the State for said road, and the other third of net proceeds shall be paid to the individual stockholders in proportion to the stock of each; and whenever such division shall have been completed and in full operation, and one-third of the estimated cost of the second division shall have been subscribed by solvent persons, and so certified as provided in section 8 of this act, the State shall subscribe the remaining two-thirds of the estimated cost of such division, and shall pay *pro rata* with individual stockholders (such payment by them being in cash or labor); and when said second division shall have been completed and in full operation, the net proceeds shall be applied as hereinafter prescribed; when the said first and second divisions shall have been completed and in full operation, and one-third of the estimated cost for completing the remaining division shall have been subscribed by solvent persons, certified as aforesaid, two-thirds of the estimated cost thereof for completing the said road to its western terminus shall be subscribed by the State; and when the same shall be put in full
215 operation, the net proceeds shall be applied as aforesaid, and the State shall pay her share of the subscription *pro rata* as aforesaid.

SEC. 11. Be it further enacted, That the manner and time of the payment of the subscription on the part of the State shall be as follows, namely: The one-fourth part as soon as the private stockholders shall pay, either in cash or labor the one-fourth part of their subscription, and the payment thereof is duly certified to the board of internal improvements by a certificate under the seal of said company, signed by their treasurer and countersigned by their president, and the balance either in part or in whole whenever the payment of the *pro rata* amount, either in cash or labor, shall be made by the private stockholders, and duly certified to the board of internal improvements in manner and form aforenamed: Provided, that the State shall not be called upon to pay an amount, at any time, of less than fifty thousand dollars.

SEC. 12. Be it further enacted, That the affairs of the company shall be managed and directed by a general board to consist of twelve directors to be elected and appointed as hereinafter provided, at the first and subsequent general annual meetings; provided, that no person shall be eligible as president or director of said company, unless he be a resident citizen of this State, and the *bona fide* owner of at least five shares of stock in said company.

SEC. 13. Be it further enacted, That the election of the directors shall be by ballot, each stockholder having as many votes as
216 he has shares in the stock of said company, and the person having a majority of all the votes polled, shall be considered duly elected; provided, that no person shall be eligible to serve as director in said board, who is not a holder of five shares of stock in said company.

SEC. 14. Be it further enacted, That the president of the company

shall be elected by the directors from among their own number, in such manner as the regulations of the company shall provide.

SEC. 15. Be it further enacted, That at the first general meeting of the stockholders, directed to be called under the seventh section of this act, a majority of all the shares subscribed shall be represented before proceeding to business; and if a sufficient number do not appear on the day appointed, those who do attend shall have power to adjourn from time to time, until a regular meeting shall thus be formed; and at such meeting the stockholders may provide a by-law, as to the number of stockholders and amount of stock to be held by them, which shall constitute a quorum for the transaction of business and all subsequent regular, or occasional meetings of stockholders.

SEC. 16. Be it further enacted, That — all elections and upon all votes taken in any general meeting of the stockholders, upon any by-law, or any of the affairs of said company, each share of stock shall be entitled to one vote; and that any stockholder in said company may vote by proxy, and proxies may be verified in such manner as the stockholders by law may prescribe.

SEC. 17. Be it further enacted, That the general commissioners shall make their returns of the shares of stock sub-
217 scribed for at the first general meeting of stockholders, and pay over to the directors elected at said meeting or their authorized agent, all sums of money received from subscribers; and for failure thereof, shall be liable to said company to be recovered at the suit of said company in any of the superior courts of law in this State, within the county where such delinquent or delinquents may reside, and in like manner from said delinquent or delinquents' executors or administrators in case of his death.

SEC. 18. Be it further enacted, That the board of directors may fill all vacancies which may occur in it during the period for which they have been elected, and in the absence of the president, may appoint one *pro tempore* from among their number.

SEC. 19. Be it further enacted, That all contracts or agreements authenticated by the president and secretary of the board of directors shall be binding on the company without a seal, or such a mode of authentication may be used as the company by their by-laws may adopt.

SEC. 20. Be it further enacted, That the board of directors may call for the payment of the sums subscribed as stock in said company, in such installments as the interests of said company may in their opinion require; the call for payment shall be published in one or more newspapers published in this State for at least one month before the day of payment, and on failure of any stockholder to pay each installment as thus required, the directors may sell at public auction, on a previous notice of ten days, for cash, all stock
218 subscribed *ro* in said company by such stockholders and convey the same to the purchaser at said sale; and if the said sale of stock do not produce sufficient to pay off the incidental expenses of said sale and the entire amount due to said company for such subscription of stock, then, and in that case, the whole bal-

ance shall be held as due at once to said company, and may be recovered of such stockholder or his executors, administrators, or assigns at the suit of said company, either by summary motion in any court of superior jurisdiction in the county where the delinquent resides, on a previous notice of ten days to such delinquent subscriber, or by action of assumpsit in any court of competent jurisdiction, or by a warrant before a justice of the peace, when the sum does not exceed one hundred dollars, and in case of the assignment of stock before the whole amount has been paid to the company, then for all sums due on such stock, both the original subscribers and the first, and all subsequent assignees, shall be liable to the company, and the same may be recovered as above described.

SEC. 21. Be it further enacted, That the debt of stockholders due to the company for the stock therein, either as original proprietors or as first or subsequent assignees, shall be considered as of equal dignity with judgments in the distribution of assets of a deceased stockholder by his personal representatives.

SEC. —. Be it further enacted, That said company shall issue certificates of stock to its members, and said stock may be transferred in such manner and form as may be directed by the by-laws of the company.

SEC. 23. Be it further enacted, That said company may at
219 *may at* any time increase its capital to a sum sufficient to complete said road, not to exceed ($6,000,000) six millions of dollars.

SEC. 24. Be it further enacted, That the board of directors shall once in every year at least, make a full report of the state of the company and its affairs, to a general meeting of the stockholders, and oftener if required by law, and said report shall be laid before the board of internal improvements, and said board of directors shall have power to call a general meeting of the stockholders when the board may deem it expedient, and the company may provide by their by-laws for occasional meetings being called, and prescribe the mode thereof.

SEC. 25. Be it further enacted, That the said company shall have the exclusive right of conveyance, transportation of persons, goods, merchandise and produce, over the said railroad, to be by them constructed, at such charges as may be fixed on by the board of directors.

SEC. 26. Be it further enacted, That said company may, when they see fit *to form* (farm) out their right of transportation over said railroad, subject to the rules above mentioned; and the said company and every one who may have received — from the right of transportation of goods, wares and merchandise, over the said railroad, shall be deemed and taken to be a common carrier, as respects all goods, wares, produce and merchandise, intrusted with them for transportation.

SEC. 27. Be it further enacted, That the said company may pur-
chase, have and hold in fee, or for a term of years, any lands,
220 tenements and hereditaments, which may be necessary for the said road, or the appurtenances thereof, or for the erec-

tion of depositories, storehouses, houses for the officers, servants, or agents of the company, or for the workshops, or foundaries to be used for the said company, for *for* procuring stone or other materials, necessary for said company, in the construction or repairs of the road, or for effecting transportation thereon, and for no other purpose.

SEC. 28. Be it further enacted, That the company shall have the right when necessary, to construct the said road across, or along any public road; or water-course; provided, that the said company shall not obstruct any public road without constructing another equally as good, and other roads may hereafter connect with or across the same, upon such terms as the General Assembly may prescribe.

SEC. 29. Be it further enacted, That when any lands for right of way may be required by said company for the purpose of constructing their road, or for any of the uses described in section twenty-seven of this act, and for the want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the said company shall have the same powers to condemn all such lands belonging to individuals or corporations as may be needed for the aforenamed purposes, as were granted to and conferred upon the North Carolina Railroad Company by their act of incorporation, and shall proceed to condemn such lands in the same manner and to the same extent under the like rules, restrictions and conditions as are prescribed in the charter aforesaid, for the government of the said
221 company, and the said company shall be entitled to hold in fee-simple all lands belonging to the State, over and through which the said road may pass to an extent not exceeding one hundred feet on either side of said road; and in the absence of any contract or contracts in relation to lands through which said road may pass, it shall be presumed that the land over which said road may be constructed, together with one hundred feet on each side thereof, has been granted by the owner or owners to the company, and the said company shall have good right and title thereto, and shall have, hold and enjoy the same so long as it shall be used for the purposes of said road and no longer, unless the owner or owners shall apply for an assessment of the value of said lands as hereinbefore directed, within two years next after that part of said road has been located; and in case the owner or owners of such land, or those claiming under him, her or them shall not apply within two years from the time aforesaid, he, she or they shall be forever barred from recovering the same or having an assessment or compensation therefor: Provided that nothing herein contained shall effect the rights of infants, *feme coverts*, persons *non compos* or beyond seas, until two years after the removal of their respectives disabilities, and the same and all the estate aforesaid, shall be exempt from taxation until the dividends of profits of said company shall exceed six per centum per annum.

SEC. 30. Be it further enacted, That if any person or persons shall intrude upon said railroad by any manner of use thereof, of the

rights and privileges connected therewith without permission
222 or contrary to the will of said company, he, she or they may be indicted for a misdemeanor, and upon conviction, may be fined, and imprisoned by any court of competent jurisdiction in this State.

SEC. 31. Be it further enacted, That if any person shall willfully and maliciously destroy or in any manner hurt, or damage, or obstruct, or shall willfully and maliciously cause, aid or assist, or counsel any other person or persons to destroy, or in any manner to hurt, damage or obstruct, the said railroad, or any bridge, water tank, warehouse, or any other property of said company or any locomotive or car used for or in transportation thereon, such person or persons so offending, shall be liable to be indicted therefor, and on conviction, shall be imprisoned not more than six nor less than one month, and pay a fine not exceeding five hundred dollars, nor less than twenty dollars, at the discretion of the court before which said conviction shall take place, and shall be further liable to pay all expenses of repairing the same, and it shall not be competent for any person so offending against the provisions of this clause to defend himself by pleading or giving in evidence, that he was the owner, agent or servant of the owner of the land where such destruction, damage, injury or obstruction was done at the time the same was caused to be done.

SEC. 32. Be it further enacted, That every obstruction to the safe and free passage of vehicles on said road or its branches, shall be deemed a public nuisance, and may be abated as such, by any officer, agent or servant of said company, and the person causing such obstruction, may be indicted and punished for a misdemeanor.

223 SEC. 33. Be it further enacted, That the said company shall have the right to take, at the storehouses erected by them on said railroad, or connected therewith or its branches, goods, wares, merchandise and produce intended for transportation, prescribe the rules of priority, and charge and receive such just compensation for storage as they, by rules may establish, (which they shall cause to be published,) or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation.

SEC. 34. Be it further enacted, That the profits of the company, or so much thereof as the board of directors may deem advisable, shall, when the affairs of the company will admit, be quarterly or semi-annually divided among the stockholders, in proportion to the stock each may own.

SEC. 35. Be it further enacted, That as soon as it may become necessary to borrow the money for the payment of the subscription by this act authorized, the public treasurer shall issue coupon bonds, signed by himself, and countersigned by the comptroller, in sums not less than five hundred dollars each, pledging the State for the payment of the sum therein mentioned, with interest thereon at the rate of interest not exceeding six per cent. per annum, payable semi-annually, at such times and places as the treasurer may appoint, the principle of which bonds, shall be redeemable at the end of

thirty years from the time the same were issued; but no greater (number) of such certificates shall be issued at any one time, than may be sufficient to meet the installments required to be paid by the State at that time.

SEC. 36. Be it further enacted, That the comptroller shall
224 register such bonds at large, in a book to be kept for that purpose, at the time he countersigns the same, and when he delivers the same to the public treasurer, he shall charge in his books with the amount thereof, and also with all sums, if any, which the public treasurer may obtain by way of premium on the sale of said bonds, an account of which the public treasurer shall render to the comptroller, as soon as negotiations, from time to time for the sale of said bonds are closed.

SEC. 37. Be it further enacted, That so soon as it shall become necessary to issue the bonds aforesaid, the public treasurer shall advertise in one or more newspapers as he may think best, and invite sealed proposals for such amount of the aforesaid subscription as may be wanted at any one time, and it shall be his duty to accept those terms which may be most advantageous to the State: Provided, that in no event shall any of the said bonds be sold for less than their par value; and any premium which may be obtained on the sale of said certificates, shall be placed in the public treasury and used as other public funds, and kept or invested to pay the interest on the debt hereby authorized.

SEC. 38. Be it further enacted, That as security for the redemption of said bonds, the public faith of the State of North Carolina is hereby pledged to the holders thereof; and in addition thereto, all the stock held by the State in the Western North Carolina Railroad Company hereby created, shall be and the same is hereby pledged for that purpose, and any dividends of profits which may from time to time be declared, shall be applied to the payment of the interest
225 accruing on said bonds: but until such dividends or profits may be declared, it shall be the duty of the treasurer, and he is hereby authorized and directed to pay all such interest as the same may accrue, out of any money in the treasury not otherwise appropriated.

SEC. 39. Be it further enacted, That the bonds hereby authorized to be issued, shall have coupons attached to them, expressing on the face of them the amount of the semi-annual interest due on such bond, and the said bonds shall and may be transferrable by the holders thereof by delivery only.

SEC. 40. Be it further enacted, That it shall be the duty of the public treasurer to enter in a book to be kept for that purpose, a memorandum of such bonds as may be issued by virtue of this act, the number and date of issue, when and where payable, to whom issued or to whom sold, and — what premium, if any, the same are sold by him.

SEC. 41. Be it further enacted, That at all general meetings of the stockholders after the subscription hereinbefore provided to be made on the part of the State, shall be made, the State shall be represented by an agent or proxy appointed by the governor; and such

agent or proxy shall be entitled in the general meeting aforesaid to vote on all questions according to the State's stock except in the election of directors by the individual stockholders; and any stockholder or person, acting by proxy, who may offer to vote on any stock transferred, may be required if a stockholder present to swear that he is, or if by proxy that the person he represents
226 he believes to be the *bona fide* owner of such stock, otherwise such vote shall not be received, and on the death of any stockholder, his legal representative shall be entitled to vote either in person or by proxy; provided, that the State shall be entitled to a *pro rata* vote on her stock of one-third, according to the representation of individual stock in the meeting.

SEC. 42. Be it further enacted, That whenever the said company shall have completed, equipped and in full operation with one or more tracks for the transportation of passengers and freight, the first division of said road, and all necessary warehouses, water stations, and buildings, and the aforenamed subscription of nine hundred thousand dollars by the stockholders of the State expended, the board of directors shall at once proceed to cause books to be opened by such persons as they may appoint and at such places as they may deem best, to secure the further subscription of three hundred thousand dollars to the capital stock of said company, which may be made under such rules, requirements and conditions as shall be prescribed by the board of directors; and the persons so appointed shall make their return to the board of directors.

SEC. 43. Be it further enacted, That whenever it shall appear to the board of internal improvements of this State, by a certificate under the seal of said company, signed by their secretary, and countersigned by their president, that the said further sum of three hundred thousand dollars has been subscribed to the capital stock of said company, the said board of internal improvements shall be and they are hereby authorized and required to direct the
227 treasurer of the State to make the further subscription on behalf of the State for stock in said company, to the amount of six hundred thousand dollars in the capital stock of said company.

SEC. 44. Be it further enacted, That the manner and time of payment of the further subscription on the part of the State, shall be the same as are prescribed in section twelve of this act, and under the same conditions, restriction and certification as therein prescribed for the payment of a subscription before provided to be made on the aforenamed first subscription of said amount on behalf of the State to the capital stock in said company.

SEC. 45. Be it further enacted, That whenever and as soon as the said company shall have completed, equipped and in full operation, with one or more tracks for the transportation of passengers and freight, the second division of said railway, the board of directors of said company shall proceed in the same manner, and under the same provisions, regulations, restrictions and conditions as are prescribed in section forty-two forty-three and forty-four of this act to effect the construction of each and every consecutive division of

said railway, throughout the line located as provided in section ten of this act, and the same provisions, regulations, restrictions and conditions expressed in said sections forty-two, forty-three and forty-four of this act as aforesaid, shall be in full force when applied for the construction of each and every consecutive division of said railway throughout said line, located as provided in section ten of this act: Provided, however, that should the first subscription provided for in the seventh section of this act, — be taken by individuals, on
the first division, be four hundred thousand dollars, and the
228 five per cent. thereon paid, and the certificates thereof made
as in said seventh section mentioned, then and in that case the first subscription on the part of the treasurer of the State, for the first division, shall be eight hundred thousand dollars.

SEC. 46. Be it further enacted, That the following officers, servants and persons in the actual employment of the said company, be, and they are hereby exempted from the performance of jury and ordinary military duty: the president and treasurer of the board of directors, the chief and assistant engineers, secretaries and accountants of the company, keeper of depositories, guards stationed on the road to protect it from injury, and such persons as may be working the locomotive engines and traveling with the cars, for the purpose of attending to the transportation of passengers, produce and merchandise on the road.

SEC. 47. Be it further enacted, That any county through which the said road passes, may subscribe for any amount of the capital stock in said company, as a majority of the voters of said county may approve, for which purpose the court of pleas and quarter sessions of said counties, are hereby authorized to hold an election at the usual time- and places of voting for members of the General Assembly.

SEC. 48. Be it further enacted, That it shall be the duty of the president and directors of said company, during the first week in December, of each and every year, to transmit to the governor, to be by him laid before the General Assembly, at each biennial session, a correct statement of the receipts and expenditures of said company, during the year preceding, and also the amount of its debts. (Ratified the 15th day of February, 1855.)

229 EXHIBIT B.

LAWS OF 1866–'67, CHAPTER 106.

An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina railroad and for other purposes.

Whereas, the legislature of North Carolina, at its session of 1854–'55, passed "An act, entitled An act to incorporate the Western North Carolina Railroad Co.," and at its session of 1860–'61, and act, entitled "An act to amend the charter of the Western North Carolina Railroad Company;" and whereas, by the combined force of said acts, the faith of the State of North Carolina was pledged for the pay-

ment of four millions of dollars in bonds of the State, a portion of which have already been issued; and, whereas, it is manifestly to the interest of the people of the whole State, that the residue of the bonds when issued, shall command a high price in market; therefore,

SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the public treasurer be, and he is hereby, authorized and directed, whenever it shall become his duty under the provisions of said acts, passed at the sessions of 1854–'55 and 1860–'61, to issue bonds of the State to the amount of fifty thousand dollars, or more, to mortgage an equal amount of the stock which the State now holds in the North Carolina railroad, as collateral security, for the payment of said bonds, and to execute and deliver, with each
230 several bonds, a deed of mortgage for an equal amount of stock to said North Carolina railroad, said mortgage to be signed by the treasurer, and countersigned by the comptroller, to constitute a part of said bond, and to be transferrable in like manner with it, as provided in the charter of said Western North Carolina Railroad Company; and, further that such mortgages shall have all the force and effect in law and equity, of registered mortgages without actual registry.

SEC. 2. Be it further enacted, That the president and directors of said Western North Carolina Railroad Company be, and they are hereby, authorized and empowered, to issue bonds of the company, running for such term of years as they may deem expedient, and bearing interest at a rate not greater than eight per cent. per annum, and to make, execute and deliver, a deed or deeds of mortgage, conveying the whole or a portion of the right, title and interest of the company, in any or all the estate, both real and personal, belonging to said company, or in any manner pertaining to the same, to the purchaser or purchasers of said bonds of the company, and conditioned for securing the payment of said bonds at maturity; and also to pledge the profits of said company, or so much thereof, as may be necessary, for the payment of the interest on said bonds as it falls due; and said bonds shall be issued by said president and directors, whenever it shall appear to them necessary, for the completion of said road, to raise other funds in addition to the State's subscription, and the proceeds arising from the sale of said bonds shall be applied for the purpose of finishing the road to its western termini.

231 SEC. 3. Be it further enacted, That this act shall be in force from and after its ratification.

Ratified 19th day of December, A. D., 1866.

232 EXHIBIT C.

LAWS OF 1879, CHAPTER 138.

An act to adjust and renew a portion of the State debt.

The General Assembly of North Carolina do enact:

SECTION 1. That in order to renew and adjust a portion of the State debt incurred to aid in the construction of the North Carolina railroad, and obtain an extension of time of paying the same, and reduce the rate of interest thereon, the governor of the State is hereby authorized to appoint three commissioners for the purpose of negotiating with the holders of the said bonds and contracting with them for a renewal of the said debt on terms which may be advantageous to the State and which are approved by the governor and public treasurer.

SEC. 2. The said commissioners shall be and they are hereby authorized, with the advice and consent of said governor and public treasurer, to contract and agree with holders of said old bonds for the renewal of the same with new bonds, to be issued under the provisions of this act, upon such terms as may be agreed on by and between the said commissioners and the holders of said bonds.

SEC. 3. The said commissioners shall issue to each and every person delivering to them such old bonds in accordance with the terms of renewal which may be agreed on, a certificate which shall state the date, amount and number of the bonds and coupons delivered to them by each person, and number and amount of new bonds which such person may be entitled to receive in re-
233 newal thereof. They shall file a copy of said certificate with the public treasurer immediately after the issue thereof.

SEC. 4. The said commissioners, with the advice and consent of the governor and public treasurer, shall have power to sell said new bonds at par and invest the proceeds thereof in the purchase of the said old bonds: Provided, that no sale of such new bonds shall be made by said commissioners unless the proceeds thereof can be immediately invested in the purchase of said old bonds at *at* a rate not greater than that at which they are being exchanged for new bonds, and not more than fifty thousand dollars of said bonds shall be sold at the same time, nor shall a future sale of bonds be made until the proceeds of previous sales have been invested in the purchase of bonds as aforesaid. Upon the sale of such bonds the commissioners shall issue a certificate to the purchaser thereof, stating the number and amount of such bonds to which such purchaser is entitled.

SEC. 5. Upon presentation of said certificate to the public treasurer he shall deliver to the owner thereof the number and amount of State bonds to which he may be entitled according to said certificate, and for the purpose of effecting the renewal of said bonds and carrying out the purpose of this act, the public treasurer is hereby authorized and directed to issue bonds of the State, payable forty

years (40) from the first day of April, anno Domini one thousand eight hundred and seventy-nine, bearing interest from the first day of April one thousand eight hundred and seventy-nine, at such rate as may be agreed upon, not to exceed six per cent. per annum, payable semi-annually on the first day of April and October
234 of each and every year until the principle shall become due.

SEC. 6. The said bonds shall be coupon bonds of the denomination of fifty, one hundred, five hundred, and one thousand dollars each, and shall be signed by the governor and public treasurer, and shall be sealed with the great seal of the State; coupons thereon may be signed by (the) treasurer alone, or have a fac-simile of his signature printed, engraved or lithographed thereon, and the said bonds and coupons shall in all other respects be in such form as the treasurer may direct, and shall express on their face that they are issued in renewal of said bonds; and the coupons thereon shall after maturity be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State, of every kind whatsoever, which shall be expressed on the face thereof.

SEC. 7. The public treasurer, before delivering any of said bonds under the provisions of this act, shall record in a well-bound book an accurate account and descriptive list of the said bonds, which shall embrace the date, amount and number thereof, and the name of the person to whom issued, and shall receive and cancel the certificate issued by said commissioners on which such bonds are issued by him; but no bonds shall be issued by the public treasurer but in execution of the provisions of this act.

SEC. 8. The said new bonds and coupons shall be exempt from all taxation whatsoever, State, county and municipal, general and special, and the same shall be expressed on the face thereof; and shall in all respects stand in the place of and be entitled to the
235 same securities as are the old bonds and coupons aforesaid, and shall have the same lien on the stock of the State in the said railroad company which the said old bonds and coupons now have; and the public treasurer shall apply the dividends received by the State on its stock in said company to the payment of the coupons on said new bonds.

SEC. 9. It shall be lawful for any executor, administrator, guardian, trustee, and all persons acting in a fiduciary character, holding any of the bonds hereby authorized to be exchanged, to make the exchange provided for in this act for the bonds herein authorized to be issued; and they shall be absolved from liability or responsibility to any person having any interest in such bonds on account of such transfer and exchange; and they shall have the power to invest any trust fund held by them in the bonds authorized to be issued by this act, and the same shall be taken and regarded in all the courts of this State as a good, legal and valid investment of such trust funds by such fiduciary.

SEC. 10. The said commissioners shall hold all the bonds and coupons delivered to or purchased by them in trust for the payment of the principle and interest on the said new bonds, and shall col-

lect and receive all payments and dividends paid and made on said old bonds and coupons so held by them from any person authorized to pay the same; and said commissioners shall pay the amounts thus received to the public treasurer, and they shall be applied by him to the payment of the interest on the new bonds issued in pursuance of this act. The said old bonds shall not be cancelled, but shall remain in force until the governor shall direct the same
236 to be delivered to the public treasurer for cancellation, at which time the said bonds shall be cancelled by the public treasurer in the presence of the governor; and they shall certify under their hands the number, amount, and date of bonds and coupons cancelled by them, which certificate shall be safely kept in the office of the public treasurer.

SEC. 11. The commissioners hereby authorized to be appointed shall enter into bonds, payable to the State, in the penal sum of fifty thousand dollars, with good security, to be accepted by the public treasurer, and conditioned for the faithful performance of their duties, and shall receive as compensation for their services, a commission of one half of one per cent. on the amount of all bonds purchased by them, to be paid by the person or persons from whom the same may be purchased, and shall in no case receive any compensation from the State.

SEC. 12. In case of the death, resignation or removal of the said commissioners, or either of them, the governor shall have the power to appoint other persons to fill such vacancies.

SEC. 13. This act shall be in force from and after its ratification.

Ratified the 14th day of March, A. D. 1879.

237 EXHIBIT D.

LAWS OF 1879, CHAPTER 98.

An act to compromise, commute, and settle the State debt.

The General Assembly of North Carolina do enact:

SECTION 1. That when any person or persons, holding and owning any bond or bonds of the State of North Carolina, issued in pursuance of any act of assembly, passed at any time before the 20th day of May, 1861, exclusive of bonds issued for the construction of the North Carolina railroad, or in pursuance of the act of the General Assembly, passed at its session in 1865, it being chapter 3 of the Laws of 1865, or in pursuance of an act passed by the General Assembly at its session in eighteen hundred and sixty-seven it being chapter fifty-six of the laws of eighteen hundred and sixty-seven, or in pursuance of an act entitled "An act to provide for the payment of the State debt contracted before the war," ratified on the tenth day of March, eighteen hundred and sixty-six, or in pursuance of an act entitled "An act to provide for funding the matured interest on the public debt," ratified the 10th day of August anno Domini, eighteen hundred and sixty-eight; or any registered certificate or certificates belonging to the board of education, issued in pursuance

of an act of the General Assembly of eighteen hundred and sixty-seven, shall surrender and deliver such bond or bonds, with the coupons attached thereto, or registered certificate or certificates to the treasurer of the State, then and in that case, it shall be the duty of the treasurer of the State, and he is hereby required to issue and deliver to the person surrendering such bond or bonds, certificate or certificates, a new bond or bonds of the State, due and payable thirty years from the first day of July, anno Domini eighteen hundred and eighty, bearing interest from date at the rate of four per cent. per annum, payable semi-annually, on the first day of January and July in each successive year, at the office of the public treasurer.

238

SEC. 2. The said bonds are to be coupon bonds of the denomination of fifty dollars, one hundred dollars, and one thousand dollars, and are to be numbered from one upward, in accordance with the order of issue. They shall be signed by the governor and treasurer, and sealed with the great seal of the State; and the coupons thereon may be signed by the treasurer alone or have a fac-simile of his signature printed, engraved or lithographed thereon.

SEC. 3. The said bonds shall be exempt from all State, county or corporate taxation or assessment direct or indirect, general or special, whether imposed for the purposes of general revenue or otherwise. The said coupons shall be receivable in payment of any and all State taxes, and the same shall be expressed on the face of each coupon; the coupons shall bear the same number as the bonds to which they are attached, and in addition be numbered from one upwards, in accordance with the date of their maturity.

SEC. 4. These bonds shall be exchanged for the old bonds of the State mentioned in the first section of this act at the following rates: Class 1.—For the bonds issued before the twentieth day of ——, eighteen hundred and sixty-one, forty per cent. of the principle of the bond or bonds so surrendered.

239

Class 2.—For the bonds issued since the close of the war, by authority of acts passed before the war to aid in the construction of the Western North Carolina railroad and the bonds issued in pursuance of the said act of assembly of eighteen hundred and sixty-five, chapter three, and act of assembly eighteen hundred and sixty-seven, chapter fifty-six; the bonds issued October first, eighteen hundred and sixty-one, by authority of act of eighteen hundred and sixty-one, chapter one hundred and thirty-seven, for Western (Coalfield) railroad, the bonds issued October first, eighteen hundred and sixty-one, by authority of act- eighteen hundred and fifty-four and fifty-five, chapter two hundred and twenty-eight, section thirty-five, and resolution September the twelfth, eighteen hundred and sixty-one, and the said registered certificates of the literary fund, for the bonds issued July the first, eighteen hundred and sixty-two, by authority of act- of eighteen hundred and sixty and sixty-one, chapter one hundred and forty-two, for the construction of the Wilmington, Charlotte and Rutherford railroad, twenty-five per cent. of the principal of the bonds or certificates so surrendered.

Class 3.—And those issued in pursuance of the said funding acts

of March tenth, eighteen hundred and sixty-six, and August twentieth, eighteen hundred and sixty-eight, fifteen per centum of the principal of the bond or bonds so surrendered: Provided, that all bonds issued in exchange for the new bonds shall be surrendered with all the coupons attached.

SEC. 5. The bonds so to be issued shall be in the usual
240 form of bonds of this State, except as modified and provided by this act, and shall have printed on the face of the same the words "Issued in pursuance of an act entitled An act to compromise, commute and settle the State debt," ratified the — day of —— anno Domini one thousand eight hundred and seventy-nine, and in large red letters, "The consolidated debt of the State."

SEC. 6. That all State taxes levied and collected from professions, trades, incomes, merchants, dealers in cigars, and three-fourths of all the taxes collected from wholesale and retail dealers in spirituous vinous and malt liquors shall be held and applied to the payment of the interest on said bonds, and the provisions of this section shall be deemed and taken to be a material part of the consideration for which the bonds of the State shall or may be surrendered.

SEC. 7. That if the whole fund raised by such taxes shall not in any one year be required to pay such accruing interest, then and in that case it shall be the duty of the treasurer, with the sanction of the governor and the auditor to buy with the surplus such of the consolidated bonds as he can buy at the lowest price after thirty days' advertisement in at least two papers published in Raleigh, and he shall forthwith cancel any such bonds so purchased.

SEC. 8. That the treasurer shall provide a substantial bound book for the purpose, in which he shall make a correct descriptive list of the bonds so surrendered, which list shall embrace the number, date and amount of each, and the purpose for which the same was issued, when this can be ascertained, and the names of the
241 persons surrendering the same, and after such list shall be made, such surrendered bonds being ascertained to be present, shall be consumed by fire in the presence of the governor, the treasurer, the auditor, the attorney general, the secretary of state and superintendent of public instruction, who shall each certify under his hand respectively in such book that he saw such described bonds so consumed and destroyed.

SEC. 9. That the treasurer shall provide a well-bound book, in which shall be kept an accurate account and descriptive list of the new bonds to be issued, and such descriptive list shall embrace the date, number and amount of such bond or bonds, for which the same issued and the name of the person to whom issued.

SEC. 10. That it shall be lawful for any executor, administrator, guardian, trustee, director of any corporation, and any and all other persons acting in a fiduciary capacity holding bonds of the State, to make the exchange provided in this act, and they shall be absolved from all liability on account of said exchange.

SEC. 11. The provisions of this act for the exchange and issue of bonds shall continue in force until the first day of January, anno Domini one thousand eight hundred and eighty-two.

SEC. 12. That as a further provision for the purpose of paying the interest on these said new bonds, if the taxes for any one year upon the subject of taxation hereinbefore mentioned shall be insufficient to pay said interest, then and in that case the public treasurer shall be authorized to apply any funds in the treasury not
242 otherwise appropriated to that purpose.

SEC. 13. That in the event that the taxes collected in any one year upon the aforesaid subjects of taxation, and the funds not otherwise appropriated in the treasury when added together shall be inadequate to pay said interest, then and in that case, and in order to provide for the deficiency, the public treasurer be and he is hereby authorized to issue coupon bonds of this State of the denomination of five hundred dollars bearing date of the first day of October or April of the year of the issue, according as one or the other of said dates shall be nearest in point of time to the date of the issue. Said bonds shall be payable forty years after date, but redeemable after ten years at the option of the State, with interest at the rate of six per centum per annum, payable semi-annually on the first days of April and October. Said bonds shall bear upon their face in red letters the words "contingent bonds," and shall be numbered from one upwards in accordance with the order of their issue. They shall be signed by the governor and treasurer and sealed with the great seal of the State; but the coupons thereon may be signed by the treasurer alone, or have a fac-simile of his signature printed, engraved or lithographed thereon. The said bonds and coupons shall be exempt from all State, county or corporate taxation or assessment, direct or indirect, general or special, whether imposed for purposes of general revenue or otherwise, and they shall be lawful investments by all executors, administrators, guardians, and fiduciaries generally. The coupons on said bonds shall bear the same number as the bonds to which they are attached, and shall in addition
243 be numbered from one upwards in accordance with the date of their maturity, and they shall be and shall so express upon their face that they are receivable at and after maturity in payment of all taxes, debts, demands and dues to the State of every nature and kind whatsoever.

SEC. 14. That the public treasurer shall be authorized to sell so many of said bonds at par as shall be necessary to provide for the deficiencies aforesaid: Provided, however, that the public treasurer shall not issue and sell in the aggregate more than six hundred of these bonds.

SEC. 15. That all the provisions of this act for paying the interest on the consolidated bonds shall apply as well to the payment of the interest of these said contingent bonds.

SEC. 16. That for the purpose of carrying out the provisions of this act in relation to the furnishing of proper blank bonds and coupons, the public treasurer is authorized with the approval of the governor, to use any funds not otherwise appropriated in the treasury, not exceeding the sum of five thousand dollars.

SEC. 17. That the public treasurer is authorized to give public

notice of this plan for a settlement of the State's indebtedness by advertising in such newspapers as he may select.

SEC. 18. That this act shall be in force from and after its ratification.

Ratified the 4th day of March, A. D. 1879.

244

EXHIBIT E.

LAWS OF 1848–'49, CHAPTER 82.

An act to incorporate the North Carolina Railroad Company.

Section

1 Incorporates company with capital of $3,000,000.
2 Route of road, from Wilmington road to Charlotte.
3 Appoints commissioners for creating stock and opening books of subscription.
4 Books, when and how long to be kept open, amount of shares, five dollars of which to be paid down, to be paid over to general commissioners.
5 Duty of general commissioners in keeping open books, and when $1,000,000 shall be subscribed.
6, 7 Corporate rights and powers.—Notices of process.
8 Provision for first and subsequent general meetings, election of directors, &c.
9, 10, 11, 12, 13 Number of, and manner of voting for directors, election of president, and quorum at general meetings, votes and proxies.
14 Return to be made by general commissioners, and penalty.
15 Vacancies in board, to be filled by directors.
16 Authentication of contracts.
17 Construction and use of road, when any section is completed.
18 Right and charges for transportation of goods or passengers.
19 Company may farm out right, and made common carrier.

245

20 Manner of calling for and enforcing payments of stock.
21 Debt of deceased stockholders, equal dignity with judgments.
22 Certificates of stock shall be issued; and how transferred.
23 Capital may be increased, and how.
24 Directors to make annual report, and may call meetings.
25 Company may purchase and hold land.
26 May cross roads or streams. Proviso.
27 Proceedings in valuing land.
28 Number of feet of land condemned.
29 Absence of contract for land, provision for.
30 Land not heretofore granted, provision for.
31 and 32 Penalties for intrusion and malicious injuries.
33, 34 and 35 Of obstructions of road, storage and carriage of goods and dividends.
36 Provides for subscription on behalf of the State.

37 and 38 Provide for borrowing, and manner of borrowing money.
39 Duties of comptroller and treasurer relative to registering certificates.
40 Treasurer to advertise for proposals, &c.
41 and 42 Pledge faith of State, and make certificates transferrable.
43 and 44 Appointment of State directors, and officers exempt from mustering.
45 Putting Raleigh & Gaston road in repair, company incorporated.
46 Conditions on which they shall have one-half the road, and be exempt from liabilities, &c.

246

47 Mortgage to purchase part of the iron.
48 If terms not accepted, others incorporated.
49 Authorizes State's subscription for connecting with other road.
50 Reserve power of the General Assembly.
51 Appropriations for improving the Neuse and Tar rivers.
52 Junction of roads.
53 Limit for commencement of work three years.

SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by authority of the same, That for the purpose of effecting a railroad communication between the Wilmington and Raleigh railroad, where the same passes over the Neuse river, in the county of Wayne, and the town of Charlotte in this State, the formation of the corporate company, with the capital stock of three millions of dollars is hereby authorized, to be called "The North Carolina Railroad Company," and when formed in compliance with the conditions hereinafter prescribed, to have a corporate existence as a body politic in perpetuity.

SEC. 2. That the said company be, and the same is hereby authorized to construct a railroad from the Wilmington & Raleigh railroad, where the same passes over Neuse river, in the county of Wayne, via Raleigh, and thence by the most practicable route by Salisbury, in the county of Rowan, to the town of Charlotte, in the county of Mecklenburg.

SEC. 3. That for the purpose of creating the capital stock of said company, the following persons be, and the same are hereby appointed commissioners, viz: Joseph H. Wilson, of Charlotte; William C. Means, of Concord; John B.
247 Lord, of Salisbury; Richard Washington, Waynesboro; John McLeod, of Smithfield; George W. Mordecai, of Raleigh; Henry B. Elliott, Randolph; James M. Leech, Lexington; John M. Morehead, Greensboro; William A. Graham, Hillsboro; Nathan A. Steadman, Pittsboro; Edward B. Dudley, Wilmington; Alonzo P. Jerkins, New Berne; Samuel P. Hargrove, Lexington; Archibald G. Carter, Davie. That it shall be lawful to open books in the town of Wilmington, under the direction of William C. Bettincourt, W. A. Wright, Daniel D. Baker,

Henry T. Nutt, P. K. Dickinson, Gilbert Potter and William Peden. or any three of them; at Charlotte, under the direction of David Parks, John A. Young, James W. Osborne, Joseph H. Wilson, Williams Elms and William F. Davidson, or any three of them; at Raleigh, under the direction of Josiah O. Watson, Duncan K. McRae, William W. Holden, Thomas J. Lemay and Charles L. Hinton, or any three of them; at Gaston, under the direction of Edmund Wilkins, Willis Sledge, Benjamin W. Edwards and James Gresham or any three of them; at Warrenton, under the direction of William Eaton, Daniel Turner, Peter R. Davis, William Plummer and Thomas T. Twitty, or any three of them; at Ridgeway under the direction of George D. Baskerville, Weldon N. Edwards, Michael Collins and Alexander B. Hawkins, or any three of them; at Henderson, under the direction of John S. Eaton, Jno. D. Hawkins, William Uandriers, Demetrius E. Young, or any three of them; at Franklinton, under the direction of Edward T. Fowlkes, William H. Simms, or any three of them; at Hillsborough under the direction of D. F. Long, John Berry, Edward Strudwick and Col. Cadwalader Jones, or any three of them; at Chapel Hill, under the direction of Elisha Mitchell, William H. Merritt, Jesse Hargrave and P. H. McDade, or any three
248 of them; at Asheboro under the direction of Henry B. Elliott, Alexander Hogan, Jesse Harper, Jonathan Worth, or any three of them; at Greensborough, under the direction of John M. Morehead, John A. Gilmer, Wilson S. Hill, John A. Mebane and Jesse Lindsay, or any three of them; at Jamestown, under the direction of Richard Mendenhall, George C. Mendenhall, S. G. Coffin, J. W. Field, or any three of them; at Haywood, under the direction of Robert Faucett, P. Evans and John Williams; at Pittsboro, under the direction of J. A. Stedman, Greene Womack, S. McClenahan, and Joseph Ramsay, or any three of them; at Carthage, under the direction of A. Currie, John M. Morrison, Cornelius Dowd, and J. D. McNeill, or any three of them; at Lexington, under the direction of William R. Holt, James M. Leach, Chas. L. Paine, or any three of them; at Smithfield, under the direction of John McLeod, Bythan Bryan, L. B. Sanders Baldy Sanders, Thaddeus W. Whitley, or any three of them; at Salisbury, under the direction of Archibald H. Caldwell, Charles F. Fisher, Horace L. Robards, Maxwell Chambers, and Thomas L. Cowan, or any three of them; at Statesville under the direction of Theophilus Falls, William F. Cowan, Thomas A. Allison, or any three of them; at Concord, under the direction of Rufus Barringer, Kiah P. Harris, Daniel Coleman, R. W. Foard, and Caleb Phifer, or any three of them; at Mocksville, under the direction of John A. Lillington, Gustavus A. Miller, Archibald G. Carter, and Lemuel Bingham, or any three of them; at Salem, under the direction of Francis Frees, John Vogler, Thomas J. Wilson, John Blackburn or any three of them; whose duty it shall be to direct the opening of books for subscription of stock, at such times
249 and places, and under the direction of such persons as they, or a majority of them may deem proper; and the said commissioners shall have power to appoint a chairman of their body,

treasurer, and all other officers, and to sue for and recover all sums of money that ought, under this act, — be received by them.

SEC. 4. That all persons who may hereafter be authorized to open books for the subscription of stock by the commissioners herein appointed for that purpose, shall open said books at any time after the ratification of this act, twenty days' *previous notice being given* in some one or more of the public newspapers in this State; that said books when opened, shall be kept open for the space of thirty days at least, and as long thereafter as the commissioners above named shall direct; that all subscriptions of stock shall be in shares of one hundred dollars, the subscriber paying at the time of making such subscription five dollars on each share thus subscribed, to the person or persons authorized to receive such subscription; and in case of failure to pay said sum, all such subscriptions shall be void, and of no effect; and upon closing the books, all such sums as shall have been thus received of subscribers on the first cash installment, shall be paid over to the general commissioners, named in the third section of this act, by the persons receiving them; and for failure thereof such person or persons shall be personally liable to said general commissioners before the organization of said company and to the company itself after its organization, to be recovered in the superior court of law within this State, in the county where such delinquent resides, or if he reside in any other State, then in any court
250 in such State having competent jurisdiction: The said general commissioners shall have power to call on and require all persons empowered to receive subscriptions of stock at any time and from time to time, as a majority of them may think proper to make a return of the stock by them respectively received, and to make payment of all sums of money made by the subscribers, that all persons receiving subscriptions of stock shall pass a receipt to the subscriber or subscribers for the payment of the first installment, as heretofore required to be paid; and upon their settlement with the general commissioners, as aforesaid, it shall be the duty of the said general commissioners, in like manner to pass their receipt for all sums thus received, to the persons from whom received; and such receipts shall be taken and held to be good and sufficient vouchers to the persons holding them; that subscriptions of stock — thus received to an amount not exceeding —.

SEC. 5. It shall be the duty of said general commissioners to direct and authorize the keeping open of books for the subscription of stock in the manner above described, until the sum of one million of dollars shall have been subscribed to the capital stock of said company; and as soon as the said sum of one million dollars shall have been subscribed, and the first installment of five dollars per share on said sum shall have been received by the general commissioners, said company shall be regarded as formed, and the said commissioners, or a majority of them, shall sign and seal a duplicate declaration to that effect, with the names of the subscribers appended, and cause one of the said duplicates to be deposited in the office of the secretary of state, and thenceforth from the
251 closing of the books of subscription as aforesaid, the said subscribers to the stock shall form one body politic and cor-

porate, in deed and in law, for the purposes aforesaid, by the name and style of "The North Carolina Railroad Company."

SEC. 6. That whenever the sum of one million dollars shall be subscribed in manner and form aforesaid, the subscribers, their executors, administrators and assigns, shall be, and they are hereby *declared to be incorporated into a company by the name and style* of "The North Carolina Railroad Company;" and by that name shall be capable, in law and in equity, of purchasing, holding, selling, leasing and conveying estates, real, personal and mixed, and acquiring the same by gift, or devise, so far as shall be necessary for the purposes embraced within the scope, object and interest of their charter and no further; and shall have perpetual succession, and by their corporate name may sue and be sued, plead and be impleaded, in any court of law and equity in the State of North Carolina; and may have and use a common seal, which they may alter and renew at pleasure; and shall have and enjoy all other rights and immunities which other corporate bodies may, and of right do exercise; and may make all such by-laws, rules and regulations, as are necessary for the government of the corporation, or affecting the object for which it is created, not inconsistent with the Constitution and laws of the United States and of the State of North Carolina.

SEC. 7. That notice of process upon the principal agents of said company, or the president or any of the directors thereof, shall be deemed and taken to be due and lawful notice of service of
252 process upon the company, so as to bring it before any court within the State of North Carolina.

SEC. 8. That as soon as the sum of one million dollars shall have been subscribed in manner aforesaid, it shall be the duty of the general commissioners, appointed under the third section of this act, to appoint a time for the stockholders to meet at Salisbury, in Rowan county, which they shall cause to be previously published for the space of thirty days, in one or more newspapers, as they may deem proper, at which time and place the said stockholders, in person or proxy, shall proceed to elect the directors of the company, and to enact all such regulations and by-laws as may be necessary for the government of the corporation and the transaction of its business: the persons elected directors of this meeting, shall serve such period, not exceeding one year, as the stockholders may direct; and at this meeting, the stockholders shall fix on the day and place or places where the subsequent election of directors shall be held; and such elections shall henceforth be annually made; but if the day of the annual election should pass without any election of directors, the corporation shall not be thereby dissolved, but it shall be lawful on any other day to hold and make such elections in such manner as may be prescribed by a by-law of the corporation.

SEC. 9. That the affairs of the company shall be managed and directed by a general board, to consist of twelve directors, to be elected by the stockholders from among their number at their first and subsequent general annual meetings, as prescribed in section eighth of this act.

253 SEC. 10. That the election of directors shall be by ballot, each stockholder having as many votes as he has shares in the stock of said company; and the person having a majority of all the votes polled shall be considered as duly elected.

SEC. 11. That the president of the company shall be elected by the directors from among their number, in such manner as the regulations of the company shall prescribe.

SEC. 12. That at the first general meeting of the stockholders, directed to be called under section eighth of this act, a majority of all the shares subscribed shall be represented before proceeding to business, and if a sufficient number do not appear on the day appointed, those who do attend shall have power to adjourn from time to time until a regular meeting shall be thus formed: and at such meeting the stockholders may provide, by a by-law, as to the number of stockholders and the amount of stock to be held by them, which shall constitute a quorum for transacting business at all subsequent regular or occasional meetings of stockholders and directors.

SEC. 13. That — all elections, and upon all votes taken in any general meeting of the stockholders upon any by-laws or any of the affairs of said company, each share of stock shall be entitled to one vote, and that any stockholder in said company may vote by proxy; and proxies may be verified in such manner as the stockholders by by-laws may prescribe.

SEC. 14. That the general commissioners shall make their return of the shares of stock subscribed for, at the first general meeting of stockholders, and pay over to the directors elected at said
254 meeting, or their authorized agent, all sums of money received from subscribers, and for failure therefor, shall be personally liable to said company, to be recovered at the suit of said company, in any of the superior courts of law in this State, within the county where such delinquent or delinquents may reside, and in like manner from said delinquent or said delinquents, executors or administrators, in case of his or their death.

SEC. 15. That the board of directors may fill all vacancies which may occur in it during the period for which they have been elected, and in the absence of the president may fill his place by electing a president *pro tempore* from among their number.

SEC. 16. That all contracts or agreements, authenticated by the president and secretary of the board of directors, shall be binding on the company without a seal, or such a mode of authentication may be used, as the company, by their by-laws, may adopt.

SEC. 17. That the company shall have power and may proceed to construct as speedily as possible, a railroad, with one or more tracks to be used with steam power, which shall extend from the Wilmington & Raleigh railroad, where the same passes over Neuse river, in the county — Wayne, via Raleigh and Salisbury to the town of Charlotte, in Mecklenburg county; said company may use any section of the railroad constructed by them before the whole of said railroad shall have been completed.

SEC. 18. That the said company shall have the exclusive right of

conveyance or transportation of persons, goods, merchandise,
255 and produce over the said railroad, to be by them constructed, at such charges as may be fixed on by a majority of the directors.

SEC. 19. That the said company may, when they see fit, farm out their right of transportation over said railroad, subject to the rules above mentioned; and said company and every person who may have received from them the right of transportation of goods, wares and produce on the said railroad, shall be deemed and taken to be a common carrier, as respects all goods, wares, produce and merchandise entrusted to them for transportation.

SEC. 20. That the board of directors may call for the payment of the sums subscribed as stock in said company in such installments as the interest of said company may, in their opinion, require: the call for each payment shall be published in one or more newspapers in this State for the space of one month before the date of payment; and on failure of any stockholder to pay each installment as thus required, the directors may sell at public auction on a previous notice of ten days for cash, all the stock subscribed for in said company, by such stockholders, and convey the same to the purchaser at said sale; and if said sale of stock do not produce a sum sufficient to pay off the incidental expenses of the sale, and the entire amount owing by such stockholders to the company, for such subscription of stock, then and in that case the whole of such balance shall be held and taken as due at once to the company, and may be recovered of such stockholder or his executors, administrators or assigns, at the suit of said company, either by summary motion in any court of superior jurisdiction in the county where the de-
256 linquent resides, on a previous notice of ten days to said subscriber, or by the action of assum-sit in any court of competent jurisdiction, or by a warrant before a justice of the peace, where the sum does not exceed one hundred dollars; and in all cases of assignment of stock, before the whole amount has been paid to the company, then for all sums due on such stock, both the original subscribers, and the first and all subsequent assignees shall be liable to the company, and the same may be recovered as above described.

SEC. 21. That the debt of stockholders, due to the company for stock therein, either as original proprietor or as first or subsequent assignee, shall be considered as of equal dignity with judgments in the distribution of assets of a deceased stockholder, by his legal representatives.

SEC. 22. That said company shall issue certificates of stock to its members; and said stock may be transferred in such manner and form as may be directed by the by-laws of the company.

SEC. 23. That the said company may, at any time, increase its capital to a sum sufficient to complete said road, not exceeding — dollars, either by opening books for new stock or by selling such new stock or by borrowing money on credit of the company, and on the mortgage of its charter and works; and the manner in which

the same shall be done in either case, shall be prescribed by the stockholders at a general meeting.

SEC. 24. That the board of directors shall once in every year at least, make a full report on the state of the company, and its affairs to a general meeting of the stockholders, and oftener if required by a by-law, and shall have power to call a general meeting of
257 the stockholders, when the board may deem it expedient; and the company may provide, in their by-laws, for occasional meetings being called, and prescribe the mode thereof.

SEC. 25. That the said company may purchase, have and hold, in fee, or for a term of years, any land, tenements, or hereditaments, which may be necessary for the said road, or the appurtenances thereof, or for the erection of depositories, storehouses, houses for the officers, servants or agents of the company, or for workshops or foundaries, to be used for the said company; or for procuring stone or the materials necessary to the construction of the road, or for effecting transportation thereon, and for no other purpose whatever.

SEC. 26. That the company shall have the right when necessary to conduct the said road across or along any public road or water-course: Provided, that the said company shall not obstruct any public road, without constructing another equally as good, and as convenient, nor without making a draw to any bridge to said road, which may cross a navigable stream, sufficient for the passage of vessels navigating such stream, which draw shall be opened by the company for the free passage of vessels, navigating such stream.

SEC. 27. That when any lands or right of way may be required by said company, for the purpose of constructing their road, and for the want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commis-
258 sioners, or a majority of them, to be appointed by any court of record, having common-law jurisdiction in the county where some part of the land or right of way is situated. In making the said valuation, the said commissioners shall take into consideration the loss or damages which may accrue to the owner or owners in consequence of the land or the right of way being surrendered, and the benefit and advantage he, she or they may — received from the erection or establishment of the railroad or work, and shall state particularly the value and amount of each; and the excess of loss and damage, over and above the advantage and benefit, shall form the measure of valuation of the said land or right of way: Provided, nevertheless, that if any person or persons over whose land the road may pass, should be dissatisfied with the valuation of said commissioners, then and in that case, the person or persons so dissatisfied may have an appeal to the superior court, in the county where the said valuation has been made, or in either county in which the land lies, when it may lie in one — more than one county, under the same rules, regulations and restrictions as in appeals from judgments of justices of the peace. The proceedings of the said commissioners, accompanied with the full description of the said land or right of way, shall be returned, under the hands and seals of a majority

of the commissioners, to the court from which the commission issued, there to remain a matter of record. And the lands or right of way so valued by the said commissioners, shall vest in the said company so long as the same shall be used for the purposes of said railroad, so soon as the valuation may be paid, or, when refused, may have been tendered: Provided, that on application for the appointment of commissioners, under this section, it shall be made to appear to the satisfaction of the court, that at least ten days' previous notice has been given by the applicant to the owner or owners of land so proposed to be condemned, or, if the owner or owners be infants, or *non compos mentis*, then to the guardian of such owner or owners, if such guardian can be found within the county, or if he cannot be so found, then such appointment shall not be made unless notice of the application shall have been published, at least one month next preceding, in some newspaper printed as convenient as may be to the court-house of the county, and shall have been posted at the door of the court-house, on the first day at least of the term of said court, to which the application is made: Provided further, that the valuation provided for in this section, shall be made on oath by the commissioners aforesaid, which oath, any justice of the peace, or clerk of the court of county in which the land or part of it lies, is hereby authorized to administer: Provided further, that the right of condemnation herein granted shall not authorize the said company to invade the dwelling-house, yard, garden or burial ground of any individual, without his consent.

SEC. 28. That the right of said company to condemn lands in the manner prescribed in the 27th section of this act, shall extend to the condemning one hundred feet on each side of the main track of the road, measuring from the center of the same, unless in case of deep cuts and fillings, when said company shall have power to condemn as much in addition thereto, as may be necessary for the purpose of constructing said road; and the company shall also have power to condemn any appropriate lands in like manner, for the constructing and building of depots, shops, warehouses, buildings for servants, agents and persons employed on the road, not exceeding two acres in any one lot or station.

SEC. 29. That in the absence of any contract or contracts with said company, in relation to lands through which said road or its branches may pass, signed by the owner thereof or by his agent, or any claimant or person in possession thereof which may be confirmed by the owner thereof, it shall be presumed that the land upon which the said road or any of its branches may be constructed, together with a space of one hundred feet on each side of the center of the said road has been granted to the said company, by the owner or owners thereof; and the said company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used for the purposes of said road and no longer, unless the person or persons owning the said land at the time that part of the said road which may be on the said land, was finished, or those claiming under him, her or them, shall apply for an assessment of

the value of said lands, as hereinbefore directed, within two years next after that part of said road, which may be on the said land, was finished; and in case the said owner or owners, or those claiming under him, her or them, shall not apply within two years next after the said part was finished, he, she or they shall be forever barred from recovering said land or having any assessment or compensation thereof: Provided, nothing therein contained shall effect the rights of feme coverts or infants, until two years after the removal of their respective disabilities.

SEC. 30. That all lands not heretofore granted to any person, nor appropriated by law to the use of the State, within one hun-
261 dred feet of the center of said road, which may be constructed by the said company, shall vest in the company as soon as the line of the road is definitely laid out through it, and any grant of said land thereafter shall be void.

SEC. 31. That if any person or persons shall intrude upon the said railroad by any manner of use thereof, or the rights and privileges connected therewith, without the permission or contrary to the will of the said company, he, she or they may be indicted for misdemeanor, and upon conviction, fined and imprisoned by any court of competent jurisdiction.

SEC. 32. That if any person shall wilfully and maliciously destroy, or in any manner hurt, or damage, or obstruct, or shall wilfully and maliciously cause, or aid, or assist or counsel and advise any other person or persons to destroy or in any manner to hurt, damage or destroy, injure or obstruct the said railroad, or any bridge or vehicle used for or in the transportation thereon, any water tank, warehouse, or any other property of said company, such person or persons so offending, shall be liable to be indicted therefor, and on conviction, shall be imprisoned not more than six, nor less than one month, and pay a fine not exceeding five hundred dollars, nor less than twenty dollars, at the discretion of the court before which said conviction shall take place; and shall be further liable to pay all expenses of repairing the same; and it shall not be competent for any persons so offending against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner agent, or servant of the owner of the land where such destruction, hurt, damage, injury, or obstruction was done, at the time the same was done or caused to be done.

262 SEC. 33. That every obstruction to the safe and free passage of vehicles on the said road or its branches shall be deemed a public nuisance, and may be abated as such by any officer, agent or servant of said company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

SEC. 34. That the said company shall have the right to take at the storehouses they may establish on, or annex to their railroad or the branches thereof, all goods, wares, merchandise and produce intended for transportation, prescribe the rules of priority and charge and receive such just and reasonable compensation for storage, as they may by rules establish (which they shall cause to be published) or as may be fixed by agreement with the owner which may be dis-

inct from the rates of transportation; provided, that the said company shall not charge or receive storage on goods, wares, merchandise or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have power to transport immediately.

SEC. 35. That the profits of the company, or so much thereof as the general board may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders, in proportion to the stock each may own.

SEC. 36. That whenever it shall appear to the board of internal improvements of this State, by a certificate under the seal of said company, signed by their treasurer and countersigned by their president, that one-third have been subscribed for and taken, and that at least five hundred thousand dollars of said stock has been actually paid into the hands of said treasurer of said company,
263 the said board of internal improvements shall be, and they are hereby authorized and required to subscribe on behalf of the State, for stock in said company, to the amount of two millions of dollars to the capital stock of said company; and the subscriptions shall be paid in the following manner; to wit: the one-fourth part as soon as the said company shall commence work, and one-fourth thereof every six months thereafter, until the whole subscription in behalf of the State shall be paid; provided, the treasurer and president of said company shall, before they receive the aforesaid installments, satisfactorily assure the board of internal improvements, by the certificates, under the seal of said company, that an amount of the private subscriptions has been paid in equal proportion to the stock subscribed by the State.

SEC. 37. That if in case the present legislature shall not provide the necessary and ample means to pay the aforesaid installments on the stock subscribed for on behalf of the State, as provided for in the thirty-sixth section of this act, and in that event, the board of internal improvements aforesaid, shall, and they are hereby authorized and empowered to borrow, on the credit of the State, not exceeding two millions of dollars, as the same may be needed by the requirements of this act.

SEC. 38. That if in case it shall become necessary to borrow the money, by this act authorized, the public treasurer shall issue the necessary certificates, signed by himself and countersigned by the comptroller, in sums not less than one thousand dollars each, pledging the State for the payment of the sums therein mentioned, with interest thereon at the rate of interest not exceeding six per
264 cent. per annum, payable semi-annually, at such times and places as the treasurer may appoint—the principal of which certificates shall be redeemable at the end of thirty years from the time same are issued; but no greater amount of such certificates shall be issued at any one time than may be sufficient to meet the installments required to be paid by the State at that time.

SEC. 39. Be it further enacted, That the comptroller shall register the said certificates at large in a book to be by him kept for that purpose, at the time he countersigns the same; and when he de-

livers the same to the public treasurer, he shall charge him in his books with the amount thereof, and also with all such sums, if any, as the public treasurer may obtain by way of premium on the sale of the said certificates, an account of which the public treasurer shall render to the comptroller, so soon as negotiations from time to time, for the sale of said certificates, are closed.

SEC. 40. Be it further enacted, That if it shall become necessary to issue the certificates aforesaid, the public treasurer, shall advertise in one or more newspapers, as he may think best, and invite sealed proposals for such amount of the aforesaid sum of two millions of dollars as may be wanted at any one time, and it shall be his duty to accept those terms which may be most advantageous to the State; provided, that in no event shall any of the said certificates be sold for less than their par value; and any premium which may be obtained on the sale of said certificates shall be placed in the public treasury, and used as other public funds in the payment of interest on the debt hereby created.

SEC. 41. Be it further enacted, That as security for the
265 redemption of said certificates of debt, the public faith of the State of North Carolina is hereby pledged to the holders thereof, and in addition thereto all the stock held by the State in "the North Carolina Railroad Company," hereby created, shall be, and the same is hereby, pledged for that purpose; and any dividends of profit which may, from time to time, be declared on the stock held by the State as aforesaid shall be applied to the payment of the interest accruing on said certificates; but until such dividends of profit may be declared, it shall be the duty of the treasurer, and he is hereby authorized and directed to pay all such interest as the same may accrue out of any moneys in the treasury not otherwise appropriated.

SEC. 42. Be it further enacted, That the certificates of debt hereby authorized to be issued, shall be transferrable by the holders thereof, their agents or attorneys, properly constituted, in a book to be kept by the public treasurer for that purpose; and in every instance, where a transfer is made, the outstanding certificate shall be surrendered and given up to the public treasurer, and by him canceled and a new one, for the same amount, issued in its place to the person to whom the same is transferred.

SEC. 43. That the State shall appoint the number of directors in said company, in proportion to the stock subscribed, who shall be appointed by the governor, by and with the advice and consent of his counsel, and removed in like manner.

SEC. 44. That the following officers and servants and persons in
the actual employment of the said company be, and they are
266 hereby exempted from the performance of jury and ordinary *malitia* duty: The president and treasurer of the board of directors, and chief and assistant engineers, the secretaries and accountants of the company, keepers of the depositories, guards stationed on the road to protect it from injury, and such persons as may be working the locomotive engines and traveling with cars for

the purpose of attending to the transporting of produce, goods and passengers on the road.

SEC. 45. Be it enacted That for the purpose of putting the Raleigh & Gaston railroad in good and complete order for the profitable transportation of persons and produce, and for the further purpose of reviving the late Raleigh & Gaston Railroad Company, Rhodes N. Herndon, Thomas Miller, Jno. S. Eaton of Granville county; Wm. J. Hawkins, Welden N. Edwards, George D. Baskerville of Warren county; George W. Mordecai, Richard Smith, W. W. Holden of Wake county, Jno. D. Hawkins Sr., Allen C. Perry, Jno. D. Hawkins Jr., of Franklin county; and the late stockholders and obligors for the Raleigh & Gaston Railroad Company, or any part of them, and such other persons and corporations as may associate with them are hereby created a body politic and corporate, by the name and style of the Raleigh & Gaston Railroad Company, and by that name shall be able to sue and be sued, and shall have, possess and enjoy all the rights, franchises, powers and privileges, vested in and granted to the Raleigh & Gaston Railroad Company, by an act, entitled "An act to incorporate the Raleigh & Gaston Railroad Company," passed by the General Assembly of this State on the — day of ——, and shall be subject to all the restraints, limitations, restrictions and liabilities imposed by the said act; and all the other
267 provisions of the said act, so far as the same remain to be executed, are hereby declared to be in full force and effect, upon the following terms and conditions nevertheless.

SEC. 46. Be it enacted, That whenever the said persons and their associates named in the foregoing section shall have subscribed the sum of five hundred thousand dollars, for the purpose aforesaid, and shall have expended the same, in putting the Raleigh & Gaston railroad in full and complete order, with heavy T-rail iron, or other iron equally good, not weighing less than fifty pounds to the yard, then one-half of the said railroad, with all the machine shops, depots, water stations, engines, coaches, cars, and every other property appertaining to the said railroad, shall be sold, conveyed and transferred to the said subscribers, their heirs and assigns by the governor, under the great seal of the State; and the said late stockholders and obligors of the said Raleigh & Gaston railroad, shall be and are hereby declared to be forever released and discharged from all liability to the State, for and on account of the *the* said Raleigh & Gaston Railroad Company, upon the payment of costs incurred. And the governor is hereby authorized, and it is declared to be his duty to suspend the further prosecution of suits brought by the State, against the said stockholders and obligors, until it can be ascertained whether the said subscribers are willing to accept the conditions of this act, and that they shall be allowed two years from the passage of this act to make known their determination to the governor. And if the terms and conditions of this act shall be accepted, and the work commenced within two years, and finished within three years from the ratification of this act, then this act shall continue and be
268 in full force for ninety years and no longer.

SEC. 47. Be it further enacted, That if the conditions of this

act are accepted, and the sum of five hundred thousand dollars shall have been subscribed by solvent subscribers to be judged of by the governor and attorney general, then and in that case, the said subscribers shall have lawful authority to mortgage one-half of the said railroad, to enable them to obtain the necessary credit to purchase a part of the iron which will be needed for said road.

SEC. 48. Be it further enacted, That is the said subscribers shall refuse or neglect to accept the terms and conditions of this act, then all the benefits of the same shall be granted to Thomas F. Wyatt, John Campbell, Thomas P. Devereux, Andrew Joyner, Weldon N. Edwards, George D. Baskerville and Alexander Hawkins and such other persons as may associate with them, who shall accept and comply with all the terms and conditions of the same; and they and their successors are hereby incorporated into a company by the name and style of the Raleigh & Gaston Railroad Company, and by that name shall have lawful authority to sue and be sued, to hold, possess and enjoy all the rights, franchises, powers and privileges granted by this act and shall be subject to all the restraints, limitations, restrictions and liabilities imposed by the same.

SEC. 49. Be it enacted, That whenever the Roanoke Railroad Company, or the Seaboard & Roanoke Railroad Company with or without the aid of individuals, shall subscribe to the Raleigh and Gaston Railroad Company, one-half of the sum necessary to construct a railroad from some convenient point on the Raleigh
269 & Gaston railroad, near the Littleton depot, or any point between that depot and Roanoke river, and the town of Weldon, or any point in the neighborhood thereof, so as to connect with the Wilmington & Raleigh railroad, and the Seaboard & Roanoke railroad, and shall expend the said sum in forming the said connection, then the said Raleigh & Gaston railroad shall be extended to the said town of Weldon or in neighborhood thereof; and the public treasurer is hereby authorized and directed to subscribe for an equal sum for and in behalf of the State, and pay for such subscription, out of any money in the treasury not otherwise appropriated; and for want of such money in the treasury, the public treasurer is hereby authorized to borrow the sum at a rate of interest not exceeding six per cent. per annum, and to issue bonds payable at any time within ten years, for not less than five hundred dollars each.

SEC. 50. And be it further enacted, That one of the conditions of this charter is that this General Assembly shall have power and authority at any future session to establish regulate and control the intercourse between the North Carolina railroad and the Raleigh and Gaston railroad, so as best to secure to the public, an easy and convenient passage of persons and property.

SEC. 51. Be it further enacted, That the sum of forty thousand dollars, to be raised by the State in the same manner as other moneys are raised by the provisions of this act, be and the same is hereby appropriated for the purpose of cleaning out and improving the navigation of the River Neuse, between the town of Newbern and the town of Smithfield. And also, that the further sum of twenty-

five thousand dollars to be raised in like manner, be and the
270 same is hereby appropriated, for the purpose of clearing out and improving the navigation of the Tar river between the town of Washington and the falls of the said river; and that his excellency the governor is hereby empowered and required to appoint suitable commissioners to carry into effect the requirements of this section: Provided, the sum hereby appropriated to the Neuse and Tar rivers shall not be paid by the public treasurer, until the railroad company shall have subscribed the whole amount of stock required from them, by the provisions of this act, and have commenced operations on said road.

SEC. 52. Be it further enacted That as soon as the said North Carolina railroad is commenced and the superstructure of the same laid down at Raleigh, the owners proprietors and authorities of the Raleigh and Gaston railroad shall be, and they are hereby authorized and empowered to effect a junction and form a- actual connection with the said North Carolina railroad, at such point at or in the vicinity of Raleigh as they at their discretion may select.

SEC. 53. Be it further enacted, That all the works hereby required of the North Carolina Railroad Company shall be executed with due diligence, and if they be not commenced within three years after the ratification of this act, and finished within ten years after the period of commencement, then this charter shall be forfeited.

(Ratified 27th day of January, 1849.)

271 EXHIBIT F.

LAWS OF 1854–'55, CHAPTER 32.

An act for the completion of the North Carolina railroad.

SEC. 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the public treasurer is authorized and instructed, to subscribe in behalf of the State, for ten thousand additional shares of the capital stock in the North Carolina Railroad Company, and that he make payments for said stock, by issuing and making sale of the bonds of the State, under the same provisions, regulations and restrictions, prescribed for the sale of the bonds heretofore issued and sold to pay the State's original subscription in the stock of said company; and the same pledges and securities are hereby given for the faithful payment and redemption of the certificates of debt now authorized, that were given for those issued under the direction of said act: Provided, nevertheless, that the whole amount of principal money of such bonds or certificates of debt, shall not exceed the sum of one million of dollars.

SEC. 2. Be it further enacted, That the stock thus directed to be subscribed and paid for in behalf of the State, shall be a preferred stock in the North Carolina Railroad Company, and the stock shall be entitled to six per cent. per annum, payable semi-annually thereon, out of any dividends of profits made by said company,

before any dividends shall be paid on any other stock in the same; and that the stockholders of said company, in general meeting
272 assembled, shall give their assent to the provisions of this act; and that the president of said company shall make a certificate of said assent, under the seal of the said company, to be approved by the governor of the State, and filed in the office of the public treasurer, before the subscription shall be made as directed in the first section of this act: Provided, that said stock of one million shall continue to be preferred stock, entitled as aforesaid, only so long as, and during the time that it is held by the State; but upon being sold and transferred by the State, shall thenceforth cease to be entitled to dividends of preference as aforesaid: Provided further, that said stock may be transferred to any other work of internal improvements, by a future legislature.

SEC. 3. Be it further enacted, That the affairs of the said company shall be managed and directed by a general board to consist of twelve directors, eight on the part of the State and four on the part of the individual stockholders, to be elected and appointed as heretofore provided in the original act or incorporation of said company, at the general annual meetings of stockholders of said company; and that no person shall be competent to act as a director in said company, who is not a stockholder to the amount of five shares of stock.

SEC. 4. Be it further enacted, That at all general meetings of the stockholders, the State shall be represented by an agent or proxy appointed by the governor, and such agent or proxy shall not be entitled, in the general meetings aforesaid, to vote in the election of directors to be elected on the part of individuals.

SEC. 5. Be it further enacted, That all real estate held by said company for right of way, for station places, of whatever
273 kind, and for workshop location, shall be exempt from taxation, until the dividends of profits of said company shall exceed six per centum per annum.

SEC. 6. Be it further enacted, That the sum of fifteen thousand dollars to be raised by the State, in the same manner as other moneys are raised by the provisions of this act, be and the same is hereby appropriated for the purpose of cleaning out and improving the navigation of Tar river, between the town of Washington and the fall of said river; and that his excellency the governor is hereby empowered and required to appoint suitable commissioners, to carry into effect the requirements of this section.

SEC. 7. Be it further enacted, That this act shall take effect and be in force from its ratification.

(Ratified the 14th day of February, 1855.)

274 EXHIBIT G.

Petition Addressed to the General Assembly of North Carolina by Certain Holders of North Carolina Bonds Issued in Aid of the W. N. C. R. R.

To the honorable the senate and house of representatives of the General Assembly of North Carolina:

Your petitioners, S. M. Schafer and S. Schafer, who are citizens and residents of the State of New York, beg leave to respectfully present to you the following petition, for such action as your honorable body may deem just and reasonable in the premises.

1. Your petitioners are the owners and holders and are now in the actual possession of two hundred and thirty-four bonds, each for the sum of one thousand dollars, which were issued by the State of North Carolina for the benefit of the Western North Carolina railroad, and which are due and payable thirty years after their respective dates. A majority of these bonds are owned by your petitioners in their own right, and the remainder are held and owned by them as trustee for others, and to each of said bonds there are attached semi-annual coupons, as are set forth in the schedule, marked Exhibit "A," hereto appended. The schedule shows the number and the date of the bonds, the date of their maturity and the number of coupons respectively attached hereto, and a copy of one of the bonds and coupons *are* also annexed.

2. Your petitioners aver that all of said bonds and cou-
275 pons are identical in form with the copies attached, except as to date and number, as appears in the exhibit.

3. Your petitioners, and those for whom they are trustees, are purchasers for value of the said bonds, relying upon the plighted faith and credit of the State of North Carolina, and upon the pledge indorsed thereon, as hereinafter set forth, and without notice at the time of their purchase, or at any time since, of any objection to the validity of the bonds or of the pledges indorsed thereon.

4. That the said bonds were issued under and by virtue of chapter 228, Acts 1854–'55, entitled "An act to incorporate the Western North Carolina Railroad Company," ratified the 15th day of February, 1855, and an act amendatory thereof, to wit, chapter 106 of the Laws of 1866–'67, ratified the 19th day of December, 1866, entitled "An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina railroad and for other purposes," which act is as follows:

"An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina railroad, and for other purposes.

"Whereas the legislature of North Carolina, at its session of 1854–'55, passed an act, entitled 'An act to incorporate the Western North Carolina Railroad Company' and at its session of 1860–'61,

an act, entitled 'An act to amend the charter of the Western North Carolina Railroad Company;' and,

"Whereas, by the combined force of said acts, the faith of the State of North Carolina was pledged for the payment of four millions of dollars in bonds of the State, a portion of which have already been issued; and,

276 "Whereas, it is manifestly the interest of the people of the whole State that the residue of the bonds, when issued, shall command a high price in the market; therefore,

"SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by authority of the same, That the public treasurer be and he is hereby authorized and directed, whenever it shall become his duty under the provisions of said acts, passed at the sessions of 1854–'55 and 1860–'61, to issue bonds of the State to the amount of fifty thousand dollars, or more, to mortgage an equal amount of the stock which the State now holds in the North Carolina railroad, as collateral security for the payment of said bonds, and to execute and deliver, with each several bond a deed of mortgage for an equal amount of stock *to* (of) said North Carolina railroad, said mortgage to be signed by the treasurer and countersigned by the comptroller, to constitute a part of said bond, and to be transferable in like manner with it, as provided in the charter of said Western North Carolina Railroad Company; and further, that such mortgage shall have all the force and effect, in law and equity, of registered mortgages without actual registry.

"SEC. 2. Be it further enacted, That the president and directors of said Western North Carolina Railroad Company be and they are hereby, authorized and empowered to issue bonds of the company, running for such term of years as they may deem expedient, and bearing interest at a rate not greater than 8 per cent. per annum, and to make, execute and deliver a deed or deeds of mortgage, conveying the whole or a portion of the right, title and interest of the company, in any or all the estate, both real and personal,

277 belonging to said company, or in any manner pertaining to the same, to the purchaser or purchasers of said bonds of the company, and conditioned for securing the payment of said bonds at maturity; and also to pledge the profits of said company, or so much thereof as may be necessary, for the payment of the interest on said bonds, as it falls due; and said bonds shall be issued by said president and directors, whenever it shall appear to them necessary, for the completion of said road, to raise other funds in addition to the State's subscription; and the proceeds arising from the sale of said bonds shall be applied for the purpose of finishing the road to its western termini.

"SEC. 3. Be it further enacted, That this act shall be in force from and after its ratification.

"Ratified the 18th day of December, A. D. 1866."

5. That under and by virtue of section 1 of the said act of 1866–'67, chapter 106, the State treasurer was directed to mortgage "an equal

amount of the stock which the State now holds in the North Carolina railroad as collateral security for the payment of said bonds, and to execute and deliver with each several bond a deed of mortgage for an equal amount *to* (of) stock of said North Carolina railroad, said mortgage to be signed by the treasurer and countersigned by the comptroller to constitute a part of said bond and to be transferable in like manner with it, as provided in the charter of said Western North Carolina Railroad Company; and, further, that said mortgage shall have the force and effect, in law and equity, of registered mortgages without actual registry."

6. That at the time of the passage of said act the State was
278 the owner of 30,000 shares of stock in the North Carolina Railroad Company of the par value of three million dollars; and that the mortgage, which under the act of December 19, 1866, the treasurer of the State was required to execute, was executed in the manner following—that is to say, the State, through its treasurer and with the approval of the governor, caused to be indorsed upon each of the said bonds issued under said act of December 19, 1866, the following indorsement:

"STATE OF NORTH CAROLINA,
"TREASURY DEPARTMENT, RALEIGH, *July* 1, 1867.

"Under the provisions of an act of the General Assembly of North Carolina, entitled 'An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina Railroad Company, and for other purposes,' ratified 19th December, 1866, ten shares of the stock in the North Carolina Railroad Company, originally subscribed for by the State, are hereby mortgaged as collateral security for the payment of this bond.

"Witness the signature of the public treasurer and seal of office, and the counter-signature of the comptroller.

"KEMP P. BATTLE,
"*Public Treasurer.*

"S. W. BURGIN, *Comptroller.*"

7. That under and by virtue of the terms of the act of December 19, 1866, above set forth, and the contract thereby created between the purchasers of the said bonds and the State of North Carolina, and under and by virtue of the indorsement aforesaid, the
279 State is bound to your petitioner- to make good its contract of mortgage upon the ten shares of stock of the North Carolina Railroad Company out of the thirty thousand shares owned by the said State of North Carolina for the security of each of the bonds issued under the said act and held by the plaintiffs.

8. Your petitioners further represent that prior to the passage of the act of 1866–'67, chapter 106, under the terms of the thirty-sixth section of the act to incorporate the North Carolina Railroad Company, Acts 1848–'49, chapter 82, it was provided that the State should make a subscription of two millions of dollars to the capital stock of the North Carolina Railroad Company, and under and by virtue of the Laws of 1854–'55, chapter 32, section 1, amending

the act just above recited, the amount of the State's subscription was increased to three million of dollars; and under and by virtue of the provisions of both acts it was provided that, as security for the three million of bonds or certificates of debt, therein authorized to be issued, all the stock held by the State in the North Carolina Railroad Company was pledged as security for the said three million of bonds, known as North Carolina Railroad construction bonds, herein termed "said construction bonds."

9. That your petitioners are advised and believe that the effect of these statutes, taken in connection with the statute authorizing the pledge of the ten shares of North Carolina Railroad stock for the security of each bond issue, under the act of December 19, 1866, was to give the North Carolina construction bondholders a first mortgage, or lien or pledge, on all the State's stock in the said North Carolina Railroad Company, and to give to the holders of the
280 bonds issued in aid of the Western North Carolina railroad, under the act of December 19, 1866, a second mortgage or equitable lien upon the said stock, to the extent of ten shares for each of the bonds so issued.

10. Your petitioners further represent that the owners of the said construction bonds filed a bill in equity in the circuit court of the United States for the district of North Carolina against D. A. Jenkins, then State treasurer, the North Carolina Railroad Company and others, to enforce their lien upon, the said stock, and that there was never a final decree entered in the said suit adjudging the rights of the parties; but that pending the litigation there was an adjustment or compromise entered into between the parties to said action, as directed under the provisions of "An act to adjust and renew a portion of the State's debt," Acts 1879, chapter 138, and the said act is made a part of this petition as if fully and at large set forth.

11. That under said act commissioners were appointed who negotiated with the holders of the North Carolina Railroad construction bonds, and agreed upon a settlement and compromise with the said bondholders, as by said act authorized and directed; and that, by the terms of the said compromise, the public treasurer was directed to issue bonds of the State, dated April 1, 1879, payable forty years after date, bearing interest at the rate of 6 per cent. That by section 8 of the said act it was provided that these bonds should in all respects stand in the place of and be entitled to the same securities as were the bonds previously issued under the acts of 1848–'49 and 1854'–55, above recited, and it was provided that
the bonds should have the same lien upon the stock of
281 the State in the North Carolina Railroad Company as the bonds originally issued under said acts.

12. Your petitioners aver that the terms of the compromise, entered — under the provisions of this act between the commissioners and the bondholders, are set forth by the said commissioners in a statement, a copy of which is hereto appended, marked Exhibit "C," and prayed to be taken as a part hereof; but your petitioners aver that neither they, nor any other holder of the Western North Caro-

lina Railroad bonds, mentioned herein, were parties to, or consented to, this extension of the lien of the said construction bonds, and that such extension, so far as they are concerned, is illegal and void, in that it extends the lien of a first mortgage without the consent of the holders of the second-mortgage bonds, or those entitled to the protection of the second mortgage.

13. Your petitioners further aver that such extension of the first-mortgage bonds, so far as the rights of your petitioners are concerned, is utterly without warrant of law. Your petitioners were, at the time the first-mortgage bonds matured, entitled to pay off the total amount due on the said bonds upon the faith of the North Carolina Railroad stock pledged as collateral, and to surrender and cancel their own second-mortgage bonds upon reasonable terms, and this can now be done at any time; and that such a transaction would leave a large surplus in money or in North Carolina Railroad stock the property of the State, free and discharged from all liens. Your petitioners allege that they would consent to any course whereby their interests and the interests of the State would be mutually protected. The new extended bonds (those illegally issued in disregard of the rights of your petitioners and
282 all others holding the second-mortgage bonds) bear 6 per cent. interest and have still nineteen years to run; whereas, your petitioners aver that a bond issued by the State, bearing interest at a less rate than 4 per cent.—for example, at the rate of .0365, or three and a half per cent., without any collateral or security save that of the faith and credit of the State—will sell for par in the markets of the world. Your petitioners further aver that but for the rule that the State of North Carolina cannot be sued, their right to a relief in the courts would be clear and unmistakable, and that the relief to which they are entitled could be obtained in the courts; as under the construction of the law made in the circuit court of the United States such relief was administered to the holders of the first-mortgage construction bonds, above mentioned, severally known as the "Swazey bonds." Your petitioners frankly admit that, under later decisions of the Supreme Court of the United States they are not confident that their rights can be administered in the Federal courts, so far as any claim involving the stock held by the State of North Carolina is concerned. But your petitioners aver that, as upon the one hand, they are in honor and in justice entitled to have their rights adjudicated, so, upon the other, the adjudication of such rights would result in great advantage to the State. The equitable right of your petitioners to have their second mortgage passed upon, and their right to a condemnation of the property pledged to the payment of the amount due upon the bonds of your petitioners after the payment of the principal of the first mortgage (the interest having been paid continuously since the adjustment) properly adjudicated, is beyond question. Certainly the holder
283 of the Swazey bonds could not object. Any course that the State might take, if the right of your petitioners to have the State's stock in the North Carolina Railroad Company sold should

be affirmed, would result in large profit to the State, and that without any bad faith upon its part; because the second-mortgage bondholders have always been entitled in law and equity to have the first mortgage paid off upon its maturity. By the sale of about twenty thousand shares of the thirty thousand owned by the State, at the prevailing prices of the stock, of the North Carolina railroad, the total issue of first-mortgage bonds could be paid off, and a sufficient additional sum realized out of which the State could pay or adjust the second-mortgage bonds owned by your petitioners. This would leave the State in possession of ten thousand (10,000) shares of stock of the North Carolina railroad free from any lien and realizing at least seventy thousand dollars to the State each year, and besides, give the State the satisfaction of having paid off the outstanding bonds of your petitioners, for which it is now offering about sixty thousand dollars in North Carolina 4 per cent. bonds. But if the State shall regard it as best to its interest to retain the thirty thousand shares of stock in the North Carolina railroad, as your petitioners believe will be to its interest to do, then it can purchase the stock at the sale, to which your petitioners would be and are in law and justice entitled in any court, at any price to which it might be bid up, since the surplus above the amount of the bonds outstanding would belong to the State; and by a sale of about three million two hundred thousand dollars of three and a half per
284 cent. bonds ($3,200,000), pay off and discharge all the bonds secured by the pledge of stock, first and second mortgages. Thus, by paying an interest charge of about one hundred and twelve thousand dollars, it would receive an annual income of two hundred and ten thousand dollars, an annual excess upon its stock of about one hundred thousand dollars a year. Or if the State shall decline to become a party to any litigation, then it surely should be willing to issue bonds to the amount of the value of the stock actually pledged (ten shares to each bond) to the security of the bonds. The State's stock is three millions, worth four million eight hundred thousand. The par value of the outstanding State bonds is two million seven hundred and twenty thousand dollars. The railroad stock at par is ample security for the bonds, and the State owns two thousand eight hundred shares, practically free from lien. Of this, two thousand four hundred and twenty shares are pledged to the security of petitioners' bonds, or two thousand five hundred shares to all outstanding bonds of this class.

The State surely should issue State bonds to the amount of the value of this stock, four hundred thousand dollars, to discharge the lien of the second mortgage. Your petitioners are willing to meet the State in a frank and liberal spirit to adjust their claims.

14. Your petitioners further show that since the so-called extension of the construction bonds by the agreement of 1880, the dividends on the State stock have annually amounted to one hundred and eighty thousand dollars ($180,000), while the annual interest on the construction bonds has amounted only to the sum of one hundred

and sixty-three thousand and two hundred dollars ($163,200),
285 thus leaving an excess of sixteen thousand and eight hundred dollars ($16,800) per annum for the period of twenty years, making a total of three hundred and thirty-six thousand dollars ($336,000), which amount has been covered into the general fund of the State treasury, and has been used for the ordinary expenses of the State, notwithstanding the rights of the petitioners under the second mortgage to have the same applied to the payment of the interest on their bonds, amounting to fourteen thousand and forty dollars ($14,040) per annum.

15. That your petitioners are informed and believe and, upon such information and belief, allege, that all of the bonds issued under the act of 1854–'55, as amended by the act of 1866–'67, save and except the two hundred and thirty-four bonds held by petitioners and a few others, have been surrendered to the State and cancelled, and there now remains only about two hundred and fifty thousand dollars, principal of said bonds, and the interest due thereon.

16. That your petitioners are informed and believe, and so allege, that there were issued under the act of 1866, bonds of the State amounting to about sixteen hundred thousand dollars ($1,600,000), principal, and calling for the collateral in the stock of the North Carolina Railroad Company; that by the act of 1879, offering to the creditors of the State a compromise, this class of bonds, issued after the act of 1866, calling for the collateral aforesaid, were scheduled at twenty-five cents on the dollar of their face, without anything for the overdue coupons; that petitioners are informed and believe that, at the time when this offer was made by the State, the stock in the North Carolina Railroad Company, owned by the State, was, according to market value, worth
286 less than a sufficiency to pay off the first mortgage, and for this reason, many of the holders of this class of bonds, seeing that their security could not realize anything for their benefit upon its then existing value accepted the compromise offered by the State, surrendered their bonds in exchange for 4 per cent. bonds of the State; that your petitioners, believing that the wealth of the State would increase in proportion to its great resources, and especially believing that the stock of the North Carolina Railroad Company would increase in value, declined to accept the offer of twenty-five cents on the dollar and decided to wait until their collateral should reach a value sufficient to pay off the first mortgage, and to pay off the second mortgage also; that the hopes and expectations of your petitioners have been more than realized, and the stock has risen in commercial value to a point where it is sufficient not only to pay off the first and second mortgage bonds, now outstanding, but to leave a large and valuable asset to the State, as has been set forth.

Your petitioners, in consideration of the foregoing facts, therefore say:

1. That the State is indebted to them as holders of the bonds particularly set forth in the exhibit to the petition in the sum of

$647,160, of which $234,000 is principal and the remainder is interest.

2. That they are entitled to a lien of a mortgage or pledge or security upon 2,340 shares of stock owned by the State in the North Carolina railroad, and upon the surplus of $346,000, which the State received as dividends upon the said stock since 1879 in excess
287 of the payment of interest on the first-mortgage bonds, which amount was appropriated by the State to its general purposes, in contravention of the rights of your petitioners.

3. Your petitioners further declare that the first-mortgage construction bonds are due and payable, so far as your petitioners are concerned, and that they are entitled to a sale of so much of the said North Carolina Railroad stock owned by the State as may be necessary to discharge the first-mortgage bonds in full, and out of the stock remaining to a sale of 2,340 shares, the proceeds to be credited as a payment on the amount due on the bonds owned by your petitioners.

4. Your petitioners further aver that under all the facts set forth above, they should be allowed access to the courts to assert their claim as set forth above, notwithstanding the fact that the State holds the title to its stock in the N. C. R. R. Co., subject to the pledges above set forth.

Your petitioners therefore respectfully ask that Your Excellency shall recommend to the General Assembly the passage of such legislation as will secure to your petitioners the payment of the amount set forth, either directly from the State, or by the enforcement of their lien upon the North Carolina Railroad stock, as above claimed, and the right to resort to the courts to prosecute their claim.

S. M. SCHAFER,
S. SCHAFER,
Partners Doing Business as Schafer Bros.,
By F. H. BUSBEE, *Attorney.*

NOTE.—The petitioners now own eight more bonds, making two hundred and forty-two in all.

288

EXHIBIT "A."

No.	Date.	Coupons from—	Signed by—		Maturity.	Endorsement signed by—
			Comptroller.	Treasurer.		
4398	July 1, 1867.	Jan., 1869.	S. W. Burgin.	Kemp P. Battle.	July 1, 1897.	Same officials.
4045	do	do	do	do	do	do
4048	do	do	do	do	do	do
4073	do	do	do	do	do	do
4075	do	do	do	do	do	do
4378	do	do	do	do	do	do
3935	do	do	do	do	do	do
4487	do	do	do	do	do	do
4489	do	do	do	do	do	do
4488	do	do	do	do	do	do
4551	do	do	do	do	do	do
4556	do	do	do	do	do	do
4555	do	do	do	do	do	do
3990	do	do	do	do	do	do
3991	do	do	do	do	do	do
4554	do	do	do	do	do	do
4550	do	do	do	do	do	do
4549	do	do	do	do	do	do
4552	do	do	do	do	do	do
4553	do	do	do	do	do	do
3873	do	do	do	do	do	do
4373	do	do	do	do	do	do
3982	do	do	do	do	do	do
289						
3983	July 1, 1867.	Jan., 1869.	S. W. Burgin.	Kemp P. Battle.	July 1, 1897.	Same officials.
3984	do	do	do	do	do	do
3986	do	do	do	do	do	do
3985	do	do	do	do	do	do
3988	do	do	do	do	do	do
3987	do	do	do	do	do	do
3989	do	do	do	do	do	do
4246	do	do	do	do	do	do
3815	do	do	do	do	do	do
4214	do	do	do	do	do	do
4240	do	do	do	do	do	do
3807	do	do	do	do	do	do
4416	do	do	do	do	do	do
3860	do	do	do	do	do	do
4415	do	do	do	do	do	do
4413	do	do	do	do	do	do
3861	do	do	do	do	do	do
4215	do	do	do	do	do	do
4227	do	do	do	do	do	do
4228	do	do	do	do	do	do
4370	do	do	do	do	do	do
4371	do	do	do	do	do	do
4462	do	do	do	do	do	do
4520	do	do	do	do	do	do
4225	do	do	do	do	do	do
4394	do	do	do	do	do	do

Exhibit "A"—Continued.

No.	Date.	Coupons from—	Signed by—		Maturity.	Endorsement signed by—
			Comptroller.	Treasurer.		
290						
4038	July 1, 1867.	Jan., 1869.	S. W. Burgin.	Kemp P. Battle.	July 1, 1897.	Same officials.
4521	do	do	do	do	do	do
4516	do	do	do	do	do	do
3773	do	do	do	do	do	do
4224	do	do	do	do	do	do
3910	do	do	do	do	do	do
4205	do	do	do	do	do	do
4108	do	do	do	do	do	do
4395	do	do	do	do	do	do
4405	do	do	do	do	do	do
4364	do	do	do	do	do	do
3930	do	do	do	do	do	do
4012	do	do	do	do	do	do
4365	do	do	do	do	do	do
3891	do	do	do	do	do	do
4091	do	do	do	do	do	do
3913	do	do	do	do	do	do
4248	do	do	do	do	do	do
4235	do	do	do	do	do	do
4299	do	July '69.	do	do	do	do
5248	Jan. 1, '68.	Jan., '69.	do	do	Jan. 1, '98.	do
4856	do	do	do	do	do	do
4884	do	do	do	do	do	do
4808	do	do	do	do	do	do
4855	do	do	do	do	do	do
291						
5857	Jan. 1, '68.	Jan., '69.	S. W. Burgin.	Kemp P. Battle.	Jan. 1, '98.	Same officials.
5623	do	do	do	do	do	do
5470	do	do	do	do	do	do
5378	do	do	do	do	do	do
5377	do	do	do	do	do	do
5389	do	do	do	do	do	do
5324	do	do	do	do	do	do
4711	do	do	do	do	do	do
4810	do	do	do	do	do	do
5384	do	do	do	do	do	do
4822	do	do	do	do	do	do
4823	do	do	do	do	do	do
5224	do	do	do	do	do	do
5225	do	do	do	do	do	do
4942	do	do	do	do	do	do
4943	do	do	do	do	do	do
4944	do	do	do	do	do	do
5657	do	do	do	do	do	do
5236	do	do	do	do	do	do
4988	do	do	do	do	do	do
5743	do	do	do	do	do	do
4971	do	do	do	do	do	do
4598	do	do	do	do	do	do
5800	do	do	do	do	do	do
5801	do	do	do	do	do	do
5818	do	do	do	do	do	do

Exhibit "A"—Continued.

No.	Date.	Coupons from—	Signed by—		Maturity.	Endorsement signed by—
			Comptroller.	Treasurer.		
292						
5816	Jan. 1, 1868.	Jan., 1869.	S. W. Burgin.	Kemp P. Battle.	Jan. 1, 1898.	Same officials.
5817	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5342	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5325	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5326	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5329	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5343	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5331	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5330	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5327	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5328	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5391	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5390	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5242	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5244	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5854	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4877	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4881	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4875	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4879	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4878	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5475	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4620	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4619	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4874	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4621	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
293						
4862	Jan. 1, 1868.	Jan., 1869.	S. W. Burgin.	Kemp P. Battle.	Jan. 1, 1898.	Same officials.
5661	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4682	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5371	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4880	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5344	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4616	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5291	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4873	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4896	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5286	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4610	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4885	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4883	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4617	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4882	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4614	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4876	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4607	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4606	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4601	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4656	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
4618	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5883	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5833	...do...	...do...	....do.....	.....do.....	...do...	.....do.....
5684	...do...	...do...	....do.....	.....do.....	...do...	.....do.....

Exhibit "A"—Continued.

No.	Date.	Coupons from—	Signed by—		Maturity.	Endorsement signed by—
			Comptroller.	Treasurer.		
294						
4605	Jan. 1, 1868.	Jan., 1869.	S. W. Burgin.	Kemp P. Battle.	Jan. 1, 1898.	Same officials.
4604	...do...	...do...	...do...	...do...	...do...	...do...
4603	...do...	...do...	...do...	...do...	...do...	...do...
4706	...do...	...do...	...do...	...do...	...do...	...do...
4645	...do...	...do...	...do...	...do...	...do...	...do...
4643	...do...	...do...	...do...	...do...	...do...	...do...
4644	...do...	...do...	...do...	...do...	...do...	...do...
4642	...do...	...do...	...do...	...do...	...do...	...do...
4641	...do...	...do...	...do...	...do...	...do...	...do...
4640	...do...	...do...	...do...	...do...	...do...	...do...
4639	...do...	...do...	...do...	...do...	...do...	...do...
4636	...do...	...do...	...do...	...do...	...do...	...do...
4637	...do...	...do...	...do...	...do...	...do...	...do...
4638	...do...	...do...	...do...	...do...	...do...	...do...
5759	...do...	...do...	...do...	...do...	...do...	...do...
5688	...do...	...do...	...do...	...do...	...do...	...do...
5763	...do...	...do...	...do...	...do...	...do...	...do...
5215	...do...	...do...	...do...	...do...	...do...	...do...
5218	...do...	...do...	...do...	...do...	...do...	...do...
5217	...do...	...do...	...do...	...do...	...do...	...do...
5216	...do...	...do...	...do...	...do...	...do...	...do...
5214	...do...	...do...	...do...	...do...	...do...	...do...
5683	...do...	...do...	...do...	...do...	...do...	...do...
5270	...do...	...do...	...do...	...do...	...do...	...do...
4982	...do...	...do...	...do...	...do...	...do...	...do...
4985	...do...	...do...	...do...	...do...	...do...	...do...
295						
5853	Jan. 1, 1868.	Jan., 1869.	S. W. Burgin	Kemp P. Battle.	Jan. 1, 1898.	Same officials.
5707	...do...	...do...	...do...	...do...	...do...	...do...
4984	...do...	...do...	...do...	...do...	...do...	...do...
4981	...do...	...do...	...do...	...do...	...do...	...do...
5770	...do...	...do...	...do...	...do...	...do...	...do...
5532	...do...	...do...	...do...	...do...	...do...	...do...
5533	...do...	...do...	...do...	...do...	...do...	...do...
4582	...do...	...do...	...do...	...do...	...do...	...do...
5638	...do...	Jan., '70	...do...	...do...	...do...	...do...
5636	...do...	...do...	...do...	...do...	...do...	...do...

Exhibit "A"—Continued.

296 No.	Date.	Coupons from—	Signed by—		Maturity.	Endorsement signed by—	
			Governor.	Treasurer.		Auditor.	Treas'r.
5986	Oct. 1, 1868.	April, 1869.	W. W. Holden.	D. A. Jenkins.	Oct. 1, 1898.	H. Adams.	D. A. Jenkins.
6195	do.	do.	do.	do.	do.	do.	do.
5919	do.	do.	do.	do.	do.	do.	do.
6149	do.	do.	do.	do.	do.	do.	do.
6151	do.	do.	do.	do.	do.	do.	do.
6147	do.	do.	do.	do.	do.	do.	do.
6121	do.	do.	do.	do.	do.	do.	do.
6120	do.	do.	do.	do.	do.	do.	do.
6125	do.	do.	do.	do.	do.	do.	do.
6148	do.	do.	do.	do.	do.	do.	do.
6062	do.	do.	do.	do.	do.	do.	do.
6175	do.	do.	do.	do.	do.	do.	do.
6176	do.	do.	do.	do.	do.	do.	do.
6183	do.	do.	do.	do.	do.	do.	do.
6092	do.	do.	do.	do.	do.	do.	do.
6093	do.	do.	do.	do.	do.	do.	do.
6094	do.	do.	do.	do.	do.	do.	do.
6095	do.	do.	do.	do.	do.	do.	do.
6096	do.	do.	do.	do.	do.	do.	do.
6118	do.	do.	do.	do.	do.	do.	do.
6117	do.	do.	do.	do.	do.	do.	do.
6116	do.	do.	do.	do.	do.	do.	do.
6115	do.	do.	do.	do.	do.	do.	do.
6114	do.	do.	do.	do.	do.	do.	do.
6101	do.	do.	do.	do.	do.	do.	do.
297							
6100	Oct. 1, 1868.	April, 1869.	W. W. Holden.	D. A. Jenkins.	Oct. 1, 1898.	H. Adams.	D. A. Jenkins.
6099	do.	do.	do.	do.	do.	do.	do.
6098	do.	do.	do.	do.	do.	do.	do.
6097	do.	do.	do.	do.	do.	do.	do.
6085	do.	do.	do.	do.	do.	do.	do.
6083	do.	do.	do.	do.	do.	do.	do.
6084	do.	do.	do.	do.	do.	do.	do.
6087	do.	do.	do.	do.	do.	do.	do.
6086	do.	do.	do.	do.	do.	do.	do.
5975	do.	do.	do.	do.	do.	do.	do.
5966	do.	do.	do.	do.	do.	do.	do.
6059	do.	do.	do.	do.	do.	do.	do.
5967	do.	do.	do.	do.	do.	do.	do.
6029	do.	do.	do.	do.	do.	do.	do.
6131	do.	do.	do.	do.	do.	do.	do.
6217	do.	Oct., '69	do.	do.	do.	do.	do.
6218	do.	do.	do.	do.	do.	do.	do.
6231	do.	do.	do.	do.	do.	do.	do.
6225	do.	do.	do.	do.	do.	do.	do.
6226	do.	do.	do.	do.	do.	do.	do.
6232	do.	do.	do.	do.	do.	do.	do.

298 EXHIBIT "B."

No. 3935.

UNITED STATES OF AMERICA.

(This certificate of debt is not subject to taxation for any purpose whatever.)

It is hereby certified that

THE STATE OF NORTH CAROLINA

Justly owes to —— ——, or bearer, one thousand dollars, redeemable in good and lawful money of the United States, at the National Bank of the Republic in the city of New York, on the 1st day of July, 1897, with interest thereon at the rate of 6 per cent. per annum, payable half yearly at the said bank on the 1st days of January and July in each year from the date of this bond and until the principal be paid on surrendering the proper coupon hereto annexed.

In witness whereof, the treasurer of the said State, in virtue of power conferred by law, hath signed this bond, and caused the seal of his office to be hereto affixed, and her comptroller hath countersigned the same at the seat of government of the said State, this 1st day of July, 1867.

KEMP P. BATTLE,
Public Treasurer.

Countersigned:
S. W. BURGIN, *Comptroller.*

299 (Issued by authority of an act of the legislature of North Carolina to incorporate the Western North Carolina Railroad Company, chapter 228.)

Coupon.

The State of North Carolina will pay to bearer at the National Bank of the Republic, in the city of New York, on the 1st day of January, 1869, thirty dollars on bond 3935 for $1,000.

$30. KEMP P. BATTLE,
Public Treasurer.

And the said bond contains the following indorsement on the back thereof:

STATE OF NORTH CAROLINA:

TREASURY DEPARTMENT, RALEIGH, *July* 1, 1867.

Under the provisions of an act of the General Assembly of North Carolina entitled "An act to enhance the value of the bonds to be issued for the completion of the Western North Carolina Railroad Company, and for other purposes," ratified 19th December, 1866, ten shares of the stock in the North Carolina Railroad Company, originally subscribed for by the State, are hereby mortgaged as collateral security for the payment of this bond.

Witness the signature of the public treasurer and seal of office, and the counter-signature of the comptroller.

KEMP P. BATTLE,
Public Treasurer.

S. W. BURGIN, *Comptroller.*

300 EXHIBIT "C."

RALEIGH, N. C., —— —, 1886.

The commissioners appointed under the act of 14th of March, 1879, to adjust and renew that portion of the State debt incurred to aid in the construction of the North Carolina railroad, announce that they are prepared to execute the act according to the terms of the following agreement, which has been subscribed to by the holders of a very large amount of the bonds:

"1. Whereas, under an act of the General Assembly of North Carolina, ratified on the 14th day of March, A. D. 1879, entitled 'An act to adjust and renew a portion of the State debt,' the governor of said State was authorized to appoint three commissioners to carry said act into execution, by the exchange of the bonds therein mentioned for new bonds, to be issued by the said State under the provisions of the said act; and whereas, George Davis, Montford McGehee and Donald W. Bain have been appointed by the governor of the said State commissioners for the purposes mentioned in said act: Now, therefore, we, the undersigned, holders of bonds of the said State in said act mentioned and described, do hereby severally, and not jointly, propose and agree to and with the said George Davis, Montford McGehee and Donald W. Bain, to exchange with them, as commissioners as aforesaid, all of the said bonds owned, held and controlled by us, respectively, in the following terms, viz:

"2. We are to deliver said bonds to said commissioners, with coupons attached thereto, falling due on the 1st day of July,
301 1878, or the 1st day of October, 1878, as the case may be, and all coupons falling due subsequent to that date. In case any of said coupons have been detached from said bonds and are not delivered therewith, the amount of such detached coupons shall be noted on the certificate of the commissioners, and in the issuing of

the new bonds the treasurer shall cut off from them and retain the first maturing coupons for thirty dollars, to the amount of the missing coupons, and shall deliver the coupons so cut off to the holders of the said old missing coupons, in exchange therefor, whenever the same shall be presented. The balance due on coupons of said bonds due anterior to the 1st day of July, 1878, is to be paid without interest out of the balance of dividends on the stock owned by the State in the North Carolina Railroad Company, not heretofore distributed in the suit known as the Swazey suit (hereinafter mentioned); and if that is not sufficient for that purpose, then, out of the surplus of the dividends on the stock owned by the State in the said railroad company, which shall not be applied to the payment of the interest on the new State bonds to be issued under the said act.

"3. In exchange for the bonds thus delivered by us we are to receive new bonds equal in amount to the principal of the bonds delivered by us to said commissioners, which shall be issued by the said State in all respects in accordance with the provisions of the act above referred to, with semi-annual coupons, attached thereto for interest of thirty dollars each, the first of which shall become due and payable on the 1st day of October, 1882, except that the first coupon of the new bonds issued in renewal of the old January and July bonds shall be for forty-five dollars instead — thirty dollars, so that the interest on each class of bonds may be equal-
302 ized, it being the intention of this contract that the bondholders shall rebate to the State two hundred and forty dollars of interest on each bond delivered for renewal.

"4. The surplus of the dividends received under said act on the stock owned by the State in the North Carolina Railroad Company, and applicable to the said old bonds, after paying the interest on said new bonds, shall remain as and constitute a sinking fund for the payment of the interest due before the 1st day of July, 1878, on such of the said old bonds as have not been presented and proved in the suit known as the Swazey suit, now pending in the United States circuit court for the eastern district of North Carolina; and after such interest is paid, then for the payment of interest and principal of the said new bonds issued under said act, and shall be sacredly held and applied to this purpose and none other; and such surplus shall be invested in the purchase of the new 4 per cent. bonds of the said State; and all of the bonds thus purchased shall be stamped and marked as the sinking fund for that purpose.

"5. The certificate for the stock owned by the State in the North Carolina Railroad Company shall be held by the public treasurer, after the same shall have been returned to the State by order of the court in the said Swasey suit until the said new bonds are paid in full, and no lien, mortgage, or other incumbrance shall be placed or made on the said stock, or by the said railroad company, which shall have a priority over the lien of said bonds on said stock.

"6. And it is understood and is hereby expressly declared to be the true intent and meaning of this agreement that the new bonds

to be issued hereunder are given, not in payment but in re-
303 newal and extension only of the old bonds, and without prejudice to the lien of the said old bonds on the State's stock in the North Carolina Railroad Company, which lien is preserved unimpaired for the security of the new bonds as fully as the old bonds are now secured thereby.

"The undersigned commissioners for the State of North Carolina, appointed under and by virtue of the act of the 14th March, 1879, entitled 'An act to adjust and renew a portion of the State debt,' do hereby, in behalf of the said State, approve, ratify and adopt the annexed and foregoing agreement and contract.

"GEO. DAVIS,
"M. McGEHEE,
"D. W. BAIN,
"*Commissioners.*"

"Executive and treasurer's offices.

"RALEIGH, *June* 14, 1882.

"We, the undersigned, governor and treasurer of North Carolina, having examined the plan of adjustment of that part of the State debt contracted for the construction of the North Carolina railroad as set forth in the foregoing contract, do hereby approve the same and do fully authorize, so far as we are empowered to do the commissioners to proceed with the settlement as set forth in said contract.

"THOS. J. JARVIS, *Governor.*
"J. M. WORTH,
"*Public Treasurer.*"

By the terms of the agreement the old bonds are to be de-
304 livered to the commissioners, with coupons attached, falling due July 1, 1878, or October 1, 1878, inclusive, as the case may be, and all coupons falling due subsequent to that date.

The commissioners will, as required by the act, issue to such person delivering the old bonds a certificate setting forth the number and amount of new bonds to which he may be entitled in renewal thereof. Upon the presentation of the certificate to the treasurer of State, he will deliver to the owner the new bonds, with coupons attached, from October 1, 1882, inclusive, subject to the provisions of paragraph 2 of the contract.

The new bonds run forty years.

The commission of one-half of one per cent. ($5 per bond), which the commissioners are to receive under the act, is upon the face of the bond, the same to be paid when the bonds and coupons are delivered to the commissioners.

The commissioners are prepared to issue the certificates and the State treasurer will issue the new bonds.

Packages of bonds transmitted by express should be addressed to C. M. Busbee, secretary of the commission, at Raleigh, charges pre-

paid, and bonds presented by the holders in person will be received by him at the office of the State treasurer.

GEORGE DAVIS,
MONTFORD McGEHEE,
CHARLES M. BUSBEE,
Commissioners.

TREASURY DEPARTMENT, RALEIGH, N. C.

The new bonds to be given in renewal of the bonds, as set forth in the foregoing circular of the commissioners, will be issued
305 from this department to the owner in person or an authorized attorney, upon the presentation of the certificate of the commissioners, and giving a receipt for them.

When old bonds are sent to the commissioners per express, the new bonds will be returned in the same manner, unless otherwise ordered, the agent of the express company receipting for them.

D. W. BAIN, *Treasurer.*

NOTE.—Mr. C. M. Busbee was appointed commissioner on the resignation of D. W. Bain, elected State treasurer.

Date of bond.	Middle section of page 300.	Western North Carolina railroad.	Name of person surrendering bonds.	Residence of person surrendering bonds.	Date of exchange.	Class II.
*[3898 July 1, 1867]	After this entry had been made and the new bonds prepared ready for the signatures of the governor and State treasurer, and before the new bonds were signed Mr. Lichtenauer ordered the return to him of these old bonds, which was done. The cancellation had been stamped into these bonds, and the State treasurer signed a certificate written on each of these bonds, which read as follows:—"This bond was sent to the State treasury department by Mr. J. M. Lichtenauer 20–22 Broad street, New York, and the cancellation stamped in it in anticipation of the issue of new four per cent. consolidated debt bonds, for which it was exchangeable. Before the new four per cent. bonds were executed Mr. Lichtenauer withdrew these bonds. The cancellation was premature and does not affect this bond. No new bond or bonds has or have ever been issued for this bond. The State treasurer returned it to Mr. Lichtenauer at his request." W. H. WORTH, *State Treasurer.* State treasury department, Raleigh, N. C., this October 30, 1900.	*[1000]	*[Joseph M. Lichtenauer, 22 Broad St., N. Y.]	*[20 Broad St., N. Y.]	*[Oct. 24, 1900.]	*[1000]
*[3899 July 1, 1867]			" "	"	"	*[1000]
*[3900 July 1, 1867]		*[1000]				*[C. 2691]
*[3901 July 1, 1867]			" "	"	"	*[1000]
(10)						*[C. 2692]
*[3902 July 1, 1867]		*[1000]	" "	"	"	*[1000]
*[3903 July 1, 1867]		*[1000]	" "	"	"	*[1000]
*[3904 July 1, 1867]		*[1000]	" "	"	"	*[1000]
*[3905 July 1, 1867]		*[1000]	" "	"	"	*[1000]
		*[1000]	" "	"	"	*[1000]
						*[8000]

*[Words and figures enclosed in brackets erased in copy.]

307 (Endorsed on envelope:) Hon. Jas. H. McKenney, clerk U. S. Supreme Court, Washington, D. C. From Ed. S. Battle, com'r. Registered Dec. 10, 1902 Raleigh, N. C. Registered, Washington, D. C. Dec. 12, 1902. Office Supreme Court of U. S. Received Dec. 13, 1902. Opened in open court by order of court and filed the 15th of December, 1902. Jas. H. McKenney, clerk Sup. Court, U. S.

Endorsed: Supreme Court U. S. October term, 1902. Term No. 9, original. The State of South Dakota, complainant, vs. The State of North Carolina *et al.* Depositions of Miles Osborne, Sherrill and Kemp Plummer Battle for complainant, & Chas. B. Aycock, Dr. J. J. Mott, H. C. Cowles, Daniel L. Russell, Fabius H. Busbee & Wm. H. Worth for defendants, & Exhibits A, B, C, D, E, F, & G. Filed Dec. 15, 1902.

308 EXHIBIT G.

CHAPTER 98, LAWS OF 1866–'67.

An act to authorize the president and directors of the Western North Carolina Railroad Company to put said road under contract.

Whereas, the charter of the Western North Carolina Railroad Company requires the road to be built by sections, putting the light work under contract at the same time with the heavy work, greatly to the injury of the State and company: Therefore,

SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the president and directors of the Western North Carolina Railroad Company are hereby authorized and empowered to put under contract, at any time they may deem advisable, any portion of said road to its western terminus (Duck Town copper mines) embracing its branch down the French Broad river to Paint Rock. Whenever one-third of the estimated cost of said portions or sections, (such portions or sections to embrace at least fifty thousand dollars worth of work at the estimated cost,) have been subscribed by solvent individuals, counties, corporations, or contractors, the treasurer of the State is hereby authorized and directed to issue bonds of the State for the remaining two-thirds, as provided by an act passed at the present session of the General Assembly, (entitled An*d* act "to enhance the value of the bonds to be issued for the Western North Carolina railroad, and for other purposes,") upon the certificate of the president of said road to the board of internal improvements,
309 that the stock has been subscribed as above required, and from time to time, as the stock is thus subscribed and certified to by the president of the company, the treasurer of the State is authorized and directed to issue said bonds until the road is completed.

SEC. 2. Be it further enacted, That the president and directors of the said Western North Carolina Railroad Company be and they are hereby authorized and empowered to issue bonds of the com-

pany, (as provided by the second section of the above-recited act, passed at the present session of the General Assembly, and ratified on the 19th day of December, A. D. 1866,) at any time and sell the same and apply the proceeds arising from the sale of said bonds to the Main Trunk road from the French Broad river, west, and the branch down the French Broad river, equally in proportion to the length of each, and from time to time, as fast as any portion of said road and its branch is completed, to issue said bonds and sell and apply to said road until it is finished to its western terminus, (at or near Ducktown copper mines).

SEC. 3. Be it further enacted, That the Western North Carolina Railroad Company are fully authorized and empowered to receive in payment of subscription from individuals, corporations, companies, or counties, lands at such valuation as may be agreed upon at the time of subscribing, by the company or its authorized agents on the one part, and such individuals, corporations, companies or counties as may subscribe to said railroad, with the understanding that payment is to be made in this way: Provided, that the stock subscribed in lands under this section, shall be fixed at a cash valuation in gold at the time of subscribing, and said lands to be
310 held by the company for sale at any time, or to be mortgaged by the company to raise the amount subscribed on the part of individuals, companies, counties or corporations: And provided further, that the State and company are to have the benefits arising from the increased value of the lands so subscribed: Provided, further, that the State treasurer shall not be called upon for the State subscription when the individual subscription is made in land, until the directors shall have realized the estimated value in money.

SEC. 4. Be it further enacted, That there shall be no discrimination, by the authority of said Western North Carolina Railroad Company, either in the rates of freight or travel, or in the running of trains, against the Wilmington, Charlotte and Rutherford Railroad Company, from the point of connection between said roads, wherever they may be, westward.

SEC. 5. Be it further enacted, That this act shall be in force from and after its ratification.

Ratified the 27th day of February, A. D. 1867.

I certify that the foregoing is a true and accurate copy of the act set forth in evidence.

ED. S. BATTLE,
Commissioner.

Endorsed: Office Supreme Court of U. S. Received Jan. 10, 1903.

Endorsed: Supreme Court U. S. October term, 1902. Term No. 9, orig'l. The State of South Dakota complainant, *vs.* The State of North Carolina *et al.* Exhibit G to depositions taken by E. S. Battle. Filed Jan'y 10, 1903.

311 In the Supreme Court of the United States.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHAS. SALTER, and SIMON Rothschilds, Defendants.

Notice for Taking Testimony.

To the complainant above named, and to Hon. D. L. Russell, Hon. Alfred Russell, and Hon. Wheeler H. Peckham, of counsel for complainant:

Please take notice that pursuant to the order of this honorable court filed herein on May — 1902, and to the stipulation of counsel heretofore made and filed herein, the complainant will take the testimony of Charles H. Burke whose address is House of Representative- Washington, D. C., orally *as* the same manner as provided for the taking of testimony in the circuit courts of the United States sitting in equity, by rule 67 of the rules of practice in equity promulgated by the Supreme Court of the United States, for use on the part of the defendant at the final hearing herein, before A. D. Watts, the commissioner designated and appointed by said stipulation to take depositions at the instance of either party herein in the city of Washington at the office of Hon. F. M. Simmons, Senate an-
312 nex, Maltby building on the 13th day of December, 1902, at 12 o'clock and thereafter from day to day as the taking of such testimony may be adjourned.

Dated Dec. 3rd, 1902.

JAS. E. SHEPHERD,
Of Counsel for Defendant State of North Carolina.

(S'd.) Agreed Dec. 5 / 02.

WHEELER H. PECKHAM,
Of Counsel for Complainant.

I hereby accept service of the within notice, Dec. 11, 1902.

CHAS. H. BURKE.
MARION BUTLER.

In the Supreme Court of the United States, October Term, 1901.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA, CHARLES Salter, and Simon Rothschilds. } No. 11. In Equity.

Pursuant to a stipulation of counsel hereto attached, I, A. D.
313 Watts, commissioner under authority thereof, on the 13th day of November, A. D. 1902, at the office of Honorable F. M. Simmons, Senate annex, Maltby building, city of Washington, Dis-

trict of Columbia, proceeded to take depositions and to the examination of witnesses in the above-entitled case, as follows.

Present: James E. Shepherd, Esq., and George Rountree, Esq., attorneys and counsel for the defendant, The State of North Carolina, Daniel L. Russell, Esq., attorney and counsel for the defendant Charles Salter; the complainant, The State of South Dakota and the defendant Simon Rothschilds not being present, either in person or by attorney. By request of parties it is ordered that these depositions be taken by question and answer.

CHARLES H. BURKE, a witness produced on behalf of the defendant, The State of North Carolina, being first duly sworn deposes and says in answer to interrogatories propounded to him by Mr. Rountree of counsel for the defendant, The State of North Carolina, as follows:

Q. #1. State your name, age, residence and occupation.

A. My name is Charles H. Burke, residence Pierre, South Dakota, age 41 years, at present one of the members of the House of Representatives from South Dakota.

Q. #2. Are you a lawyer by profession?

A. I am.

Q. #3. Mr. Burke, you delivered these bonds donated by Mr. Shafer to the authorities of the — South Dakota?

A. I did.

Q. #4. Can you tell me when that was as nearly as may be?

A. I am unable to state exactly when.

314 Q. #5. When did you receive these bonds and from whom?

A. I received them some time in September 1901, I think. The bonds when I received them were delivered into my possession by Mr. Stewart—that is my recollection.

Q. #6. Where was Mr. Stewart at that time when he delivered these bonds to you?

A. I think it was at Huron, South Dakota.

Q. #7. The Mr. Stewart to whom you refer is the Mr. R. W. Stewart of South Dakota?

A. I will explain, if you will permit me. I was away from home a considerable portion of the time during the summer of 1901. I left the State some time in July, I think, and was away until some time in September. I left directions that if any bonds were received for the State of South Dakota to deliver them to Mr. Stewart and when I returned from New York Mr. Stewart met me at Huron, having first wired me to know when I would be home, with the bonds and delivered them into my hands.

Q. #8. Do you know how they came to him?

A. I do not.

Q. #9. Do you know whether they were delivered to him in person and by whom, or whether they were delivered by express or through the mails?

A. I really do not know.

Q. #10. When did you first know of these bonds and of the purpose and intent of Mr. Shafer to make the donation?

A. Now that is rather a difficult question to answer, and the only way I can answer it as to these bonds and as to Mr. Shafer or
315 Shafer Brothers, will be that it was some time during the summer of 1901 as to these particular bonds and as to Shafer Brothers.

Q. #11. I understand you then to say that you first heard of Shafer Brothers' connection with these particular bonds, the 10 that were donated to the State of South Dakota, some time during the summer of 1901.

A. That is my recollection.

Q. #12. From whom did you get that information?

(Objection by counsel for defendant Charles Salter as irrelevant and hearsay.)

A. Senator or ex-Senator R. F. Pettigrew.

Q. #13. Will you tell us where you were when you got that information from Mr. Pettigrew?

(Objection by counsel for defendant Charles Salter as irrelevant and hearsay.)

—. I think it was in his office in Sioux Falls, South Dakota.

Q. #14. Was he counsel for any of the holders of that class of bonds at that time, to your knowledge?

A. Not to my knowledge, he did not say that he was.

Q. #15. Did he say anything about any one's holding several of the bonds and their efforts to collect them?

(Objection by counsel for defendant Charles Salter as irrelevant and hearsay.)

A. I am inclined to think that there was something of that kind said.

Q. #16. Will you Mr. Burke, just state in your own way all that you know about the bonds of the class sued on by the State
316 of South Dakota in this action, who held them, what their purposes were, and all the information you have on the subject. That will enable us to let you get through on the subject.

(Objection by counsel for defendant Charles Salter as irrelevant and hearsay.)

A. Some time in the month of February, toward the latter part of the month, as I remember it, in 1901, Senator Pettigrew in the House of Representatives said to me in substance that he thought he knew of certain parties who would make a donation to the State of South Dakota and had something to say about certain bonds. I remember distinctly that he spoke of southern bonds, and he may have mentioned two or three different States. I am not certain that he did, and I do not remember whether he mentioned specifically North Carolina or not. I am very certain that he did not mention Shafer Brothers. If *I* he had mentioned them I am not certain that

I would have recollected it, as I had never heard of them, but I do not remember that he did mention Shafer Brothers. He stated that if a donation was made to the State a law would have to be passed in order that the State might receive it, and asked me if I would bring it to the attention of the legislature, stating that if I did so and a law was passed and anything was given to the State at any time that it might go through me and that it might do me some good, or words to that effect. I presume he meant politically. I think he also stated that a similar law had been enacted by certain other States—I think he said that. I stated to him that I saw no reason why I should not ask such a bill to pass.

317 I sent or wrote a letter that same morning to Mr. Stewart of Pierre, who is a particular friend, stating in substance that I had received information that possibly some donation might be made to the State, and that such a law ought to be passed. A few days later I was called home to Pierre and while there Mr. Stewart told me that the bill had passed the Senate. I saw the chairman of the Committee on Judiciary in the House of Representatives and told him that I hoped that the bill might receive consideration. It was then late in the session. I thought it was a good bill. I did not go into any detailed explanation whatever in regard to it and the bill subsequently passed. That is substantially all I know about the transaction up to this time.

Q. # 17. Did you ever come in contact with the Shafers in reference to this business?

A. I never have—not personally; I presume you mean personally.

Q. # 18. Are you counsel for them or any of the holders of the same class of bonds?

A. I am not.

Q. # 19. When Senator Pettigrew spoke to you about these bonds and the necessity for the passage of this bill, did he say anything about the necessity of bringing a suit in the Supreme Court in order to recover on these southern bonds?

(Objection by counsel for defendant Charles Salter as irrelevant, immaterial and hearsay.)

A. I do not think anything was said about any suit.

Q. # 20. Did he say that these southern bonds to which he

318 had reference a had been disavowed or repudiated by any of the States issuing them?

(Objection by counsel for defendant Charles Salter as irrelevant, immaterial and hearsay.)

A. I think he did.

Q. # 21. Did he say that it would or might be necessary for the State to bring an action to recover on them?

A. I do not think he did, because there — no specific bonds mentioned and there was no certainty that the State would ever get any bonds.

Q. # 22. Prior to September 21, 1901, did any one owning or representing the owners of this class of bonds say anything to you about

the necessity or the probability or the possibility of the State of South Dakota maintaining a suit on these bonds and if so, who was it?

(Objection by counsel for defendant Charles Salter as irrelevant, immaterial and hearsay.)

A. After the very brief conversation which I had in the House of Representatives with Senator Pettigrew in the month of February, 1901, my recollection is I did not see him again or hear from him until I saw him in his office at Sioux Falls at the time which I have stated. I asked if there had been or would — any donation of anything to the State, referring to the conversation I had with him in the month of February, and my recollection is that at the time he mentioned to me the name of Shafer Brothers of New York, stating that they would or it was thought they would donate to the State some bonds. He probably stated or said something about a suit or rather that it might be necessary for the State to sue in order
319 to recover upon the bonds, and that it would probably be necessary for it to do so, but I am not clear as to that.

Q. #23. You did not come into contact with Governor Russell or Mr. Shafer of New York before this time in September, 1901?

(Objection by counsel for defendant Charles Salter as irrelevant and immaterial.)

A. I never conversed with any person connected with this transaction representing the State of North Carolina, Shafer Brothers or any bondholders or any one else connected with or owning these bonds prior to the commencement of this action except as I have stated. I never met Governor Russell in my life until I met him some time after the middle of January 1902.

Q. #24. Where is Senator Pettigrew now?

(Objection by counsel for defendant Charles Salter as irrelevant and immaterial.)

A. I do not know.

Cross-examination.

By counsel for defendant Charles Salter:

X Q. #1. Please state whether there was in the donation of these bonds which you delivered to the State of South Dakota any condition imposed by the donor as to the bringing of a suit by South Dakota on the bonds?

A. Absolutely none.

X Q. #2. Please state whether there was any agreement or understanding, express or implied, that South Dakota should bring a suit on the bonds.

(Objection by counsel for State of North Carolina as being
320 irrelevant, immaterial and calling for the opinion of the witness.)

A. Not to my knowledge.

X Q. #3. Please state whether the assignment to South Dakota was unconditional and absolute.

(Objection by counsel for the State of North Carolina as being irrelevant, immaterial and calling for the opinion of the witness.)

A. It was.

X Q. #4. Suppose, Mr. Burke, that South Dakota after receiving these bonds had accepted the 25 cents on the principal of them which was and is offered by North Carolina, could South Dakota have done so without committing any breach of faith or breach of any agreement with the assignor or any one else?

(Objection by counsel for State of North Carolina as being irrelevant, immaterial and calling for the opinion of the witness.)

A. I know of no reason why the State could not have done so.

X Q. #5. Why the State could not have done so?

A. I know of no reason why it could not have done so.

X Q. #6. You delivered these bonds and acted for the assignor in doing so, did you not?

A. I did.

X Q. #7. Then you must know of your own knowledge whether there was any condition or agreement or understanding as mentioned in these former questions, do you not?

(Objection by counsel for the State of North Carolina, because the question is argumentative and calls for an opinion when the
321 facts to which he has already testified speak for themselves.)

(Remark by counsel for defendant Charles Salter: "It is asking for the knowledge of the witness in express words and is not asking for an opinion.")

A. There were no conditions whatever. I think I stated to the governor that they were delivered to the State without any condition, except a suggestion that the assignor hoped that the proceeds of them might go to aid the State university; I think there was something of that kind. Of course the governor could not control them.

X Q. #8. I understand you to mean that the disposition of the bonds or their proceeds would be entirely a matter for the legislature of South Dakota?

A. Yes sir.

Re-examination.

By counsel for the State of North Carolina:

R. Q. #1. You had two conversations with Governor Herriod and Attorney General Pyle with reference to these bonds, did you not, two or three weeks apart?

A. I do not recall ever talking with the attorney general about it but once. I think I did with the governor, I think I did.

R. Q. #2. At the consultation which you had with Governor Herriod and Attorney General Pyle, Mr. Stewart was present, was he not?

322 A. He may have been, but I am not clear about that.

R. Q. #3. In that consultation was there not some discussion as to the probable amount which the State would realize on those bonds, and was it not suggested that it would be necessary to bring a suit?

A. At some time, I think subsequent to the donation, there was a conversation at which I was present about a suit, at which my recollection is that Attorney General Pyle was present, the governor and Mr. Stewart, but I am not clear in regard to it.

R. Q. #4. Mr. Burke, this conversation took place at one of the two interviews to which you have referred, did it not?

A. I am positive it did not occur when the bonds were delivered; it might have been before but I am quite certain it was after.

R. Q. #5. Was it before the suit was actually brought?

A. I presume it was, but I do not know.

R. Q. #6. When you say that you were representing the assignors, you mean through Senator Pettigrew, whose agency you have previously testified to, do you not.

A. I held no communication with reference to these bonds with any one except Senator Pettigrew, except that I think that a letter was delivered with the bonds.

R. Q. #7. In your testimony-in-chief you gave all of the facts as you remember them with reference to the donation of these bonds, did you not?

A. I did as far as I remember it.

R. Q. #8. Do you know anything about what took place between the Shafers and Senator Pettigrew or any one else represent-

323 ing the Shafers?

A. Absolutely nothing.

R. Q. #9. Do you know whether Senator Pettigrew held any communication with the reference to the donation of these bonds and their disposition with the attorney general or Mr. Stewart or Governor Herriod?

A. I do not know; I never heard that he did.

Recross-examination.

By counsel for defendant Charles Salter:

R. X Q. #1. I understand you to say that you never heard anything about a suit to be brought on these bonds except in a conversation between the governor and attorney general, and that your best recollection is that was after the delivery of the bonds?

A. That is my recollection.

R. X Q. #2. You do not know when this suit was brought, do you?

A. I do not.

R. X Q. # 3. Then this conversation about a suit may have been after the suit was brought?

A. I think it was before; I am not clear exactly.

Re-re-examination.

By counsel for the State of North Carolina:

324 R. R Q. # 1. You do not desire to qualify what you said with reference to the conversation you had with Senator Pettigrew with reference to a suit and the conversation with the governor and the attorney general?

A. You asked me whether there was anything said relative to a suit on these bonds before they were donated between Senator Pettigrew and myself. I stated and I now state that my recollection is that he mentioned something about the State having repudiated the bonds and that a suit might have to be brought to collect them, but the matter of bringing a suit he certainly did not control, and it would be with the legal department of the State, I suppose. That is the supposition.

CHARLES H. BURKE.

The foregoing deposition of Charles H. Burke was sworn to and subscribed before me at the time and place above mentioned.

A. D. WATTS,
Commissioner.

MARION BUTLER, a witness produced on behalf of the defendant, The State of North Carolina, first being duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Shepherd, of counsel for the defendant, The State of North Carolina, as follows:

1. Where do you reside Mr. Butler, and what is your position for the last few years?

My legal residence is Raleigh, North Carolina; I am an
325 attorney; I was in the Senate from March 4th, 1895 to 1901.

2. During your service as Senator did you make the acquaintance of Senator Pettigrew from South Dakota?

I did.

3. Since this have you not been associated with him in a business enterprise, or enterprises?

I am associated with him now in several enterprises.

4. State what conversation you had with Senator Pettigrew in reference to North Carolina bonds, which is the subject of this suit?

(Counsel for the defendant, Salter, objects on the ground that the question is irrelevant and hearsay.)

Some time in January or February 1901, I had a conversation with him which probably lead up to the passage of the act of the legislature in South Dakota authorizing that State to accept dona-

tions. Previous to that time, during the campaign of 1900, I spent several weeks in South Dakota in the campaign assisting Senator Pettigrew in his fight for re-election. During that time I visited nearly every State institution except the State university. Upon inquiring of Senator Pettigrew the condition of the university, and discussing the other State institutions which I had visited, he stated that it was in bad financial condition and that he had made efforts to secure some donations to supplement, what I think he referred to, the pittance appropriated by the legislature. I think he said that he had approached Mr. Andrew Carnegie and others, but he had failed to secure any cash, or tender of cash for the university, but that Mr.
Carnegie had proposed, that in the line of his general donations
326 for libraries he might consider making a cash donation for a
library at Sioux Falls, South Dakota, and that he might make a tender of some securities of some kind to the university, or for some educational or charitable purpose in the State, in response to the request. This was all casual conversation, from time to time, while I was a guest of Senator Pettigrew in South Dakota, and the details are not clear in my mind. After the assemblying of Congress the following winter, he told me on one occasion that Mr. Carnegie had either made the gift to the library at Sioux Falls of $25,000, or assured him that he would make it, and in the conversation he suggested that he had been advised that probably the State could not accept donations, if they were not in cash, or something to that effect. Whereupon I suggested to him, either during that conversation or later on, when he was showing me on one occasion the architect's design for the public library, that I thought it would be a good idea for the State to enact a law authorizing the governor, or the proper officer, to receive donations made to the State. He said he wished they had such a law, but that he had been defeated and did not control the legislature, but that he thought if the matter was brought to the attention of either one of the Congressmen, who were Republicans, that they would gladly pass the act and he would suggest the matter to them; and further that they might have any credit which would arise from personal instrumentality in securing donations to the State, if they were instrumental in securing the passage of such a law. I further suggested to him, either at that conversation or later, I think it was after he in-
formed me that Mr. Burke had agreed to secure the passage
327 of such a law, that I thought I knew where he could get a
donation, and that if I could be instrumental in the State getting it I would be glad to do so, and at any rate, the law would assist him in his difficult efforts to secure donations. At that time, I do not think I stated to him what the donations would be, bonds or not, or if bonds, the kind of bonds. In fact, the reference to whatever service I might render was incidental. He approved this suggestion and indicated his intention to secure the passage of a law, and discussed it with Mr. Burke, I think, before I made the suggestion that I would be instrumental and try and assist him to secure a donation. If I, at a later period, did discuss North Carolina bonds and lead him to believe that I could be instrumental in secur-

ing a donation of North Carolina State bonds, I would decline to give the information, because I could only have had such information from a consultation and a transaction between attorney and client, and which I understand is privileged.

5. Please state who the client is that you speak of.

The client was Schafer Brothers.

6. Then I understand that that relation existed between Schafer Brothers and you before this donation was made?

It did.

7 Did you appear of record in this case?

I did not.

8. When were you employed by Schafer Brothers?

In January 1901.

9. That was long before this donation was made and before the suit was commenced?

328 It was.

10. Who employed you Senator?

I was employed with Mr. A. G. Ricaud as associate counsel.

11. He was attorney for Schafer Brothers?

He was attorney for Schafer Brothers and all for whom Schafer Brothers acted.

12. Prior to the 1st of January, had you had conversations with Governor Russell, or Mr. Ricaud in reference to the Schafer bonds or any bonds of that class?

Some time in the fall in Mr. Ricaud's office, one day, incidentally the matter was raised by Mr. Ricaud telling me that he represented Schafer Brothers and other second-mortgage bondholders, and about the settlement he had in contemplation which consisted of a memorial to the legislature of North Carolina and trying to secure some compromise or settlement, and we discussed the matter for some time.

13. What was said about the donation of ten of these bonds to South Dakota?

Nothing. To complete the answer to your former question; after that conversation with Mr. Ricaud in the fall, the next time I was in Raleigh and at the office of Governor Russell, the matter was brought up by one of us, I do not remember which, at which time I asked the governor his opinion about the action of the legislature if such a memorial was presented, and I think I asked him what position he would take about it in his message.

14. After the petition was presented to the legislature did you have any conversation with Mr. Ricaud?

329 I was employed by Mr. Ricaud before this petition was presented, or about that time, so my employment covers all of that.

15. After the petition had been presented these ten bonds were given to South Dakota?

Yes, sir; that appears in the record.

16. Did you appear for the State of South Dakota?

I did not.

17. What conversation occurred between you and Mr. Ricaud in regard to these bonds donated to South Dakota?

Any conversation was in the interest of our client, and between associated counsel. I decline to answer on the ground that this is privileged.

18. Was the question discussed as to whether a donation of that kind would not draw into the jurisdiction of the Supreme Court of the United States the remaining bonds held or controlled by Schafer?

I decline to answer for the same reasons.

19. After this conversation with Mr. Ricaud about which you decline to answer, what was done in regard to these bonds?

Whatever was done, was done as a result of the request of client, as result of consultation.

20. After the conversation to which you refer, what occurred between you and Senator Pettigrew in reference to these bonds?

I have already answered, that whatever occurred between us, if anything did, was after my employment, and would have been the result of acting in the interest of my client, and I decline to answer for the same reason.

21. Then I understand you to decline, as a matter of privi-
330 lege, to say what occurred between you and Senator Pettigrew after the conference referred to in reference to the donation to the State of South Dakota of the ten bonds sued upon?

If anything occurred between us, it is privileged, because whatever I may have done was as a result of a consultation with my client and associate counsel, and acting for my client.

Examination by counsel for defendant Salter:

1. You say you have not appeared of record in this case? Please state whether it has not been notorious that you have been counsel for the second-mortgage bondholders, and how long that fact has been known to the public?

(Counsel for the State of North Carolina objects to the question as being irrelevant, immaterial and incompetent.)

I think it was well known. It appeared in the newspapers that I was counsel for the bondholders, in papers in the State and outside of the State a number of times, and I think, soon after my employment. I gave several interviews to the newspaper reporters who questioned me about what they had seen in the newspapers about these bondholders, and about the statement that I was of counsel for them. I did not appear of record for the reason that I was unavoidably absent in the West at the time the answer of my clients was filed. I had conferred with the other counsel when the answer was being prepared but they having made some, more or less
331 material changes since I left for the West, they decided not to take the liberty of signing my name for me.

MARION BUTLER.

The foregoing deposition of Marion Butler was sworn to and subscribed before me at the time and place above mentioned.

A. D. WATTS,
Commissioner.

UNITED STATES OF AMERICA,
City of Washington, District of Columbia.

I, A. D. Watts, duly appointed by agreement and stipulation of counsel, commissioner to take depositions in the above-entitled cause, hereby certify that the above-named witnesses, Charles H. Burke and Marion Butler, were by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that their depositions were reduced to writing by me in the presence of the said witnesses and in the presence of such of the parties and counsel as attended, and when completed were read over to said witnesses and subscribed by them in my presence and in the presence of such of the parties and counsel as attended. That said depositions were taken pursuant to the annexed stipulation at the office of Hon. F. M. Simmons in the Senate Annex building in the city of Washington, District of Columbia, beginning on the 13th day of December, A. D. 1902 and continuing until finished on that date as set forth; that the parties were represented at the taking of the depositions by the
332 respective counsel as set forth; that I am not of counsel or relative of either of the parties or otherwise interested in the event of this suit.

A. D. WATTS,
Commissioner.

(Endorsed:) In the Supreme Court of the United States. The State of South Dakota *vs.* The State of North Carolina, Charles Salter and Simon Rothschilds. No. 11 In equity. October term, 1901. Depositions of Charles H. Burke and Marion Butler taken by A. D. Watts, commissioner, in Washington D. C., Dec. 13, 1902.)

(Endorsed on envelope:) The Supreme Court of the United States. The State of South Dakota complainant, *vs.* The State of North Carolina, Charles Salter and Simon Rothschilds, defendants. Depositions of Charles H. Burke and Marion Butler, witnesses for the defendant, The State of North Carolina in the above-entitled cause, taken before me and by me sealed and transmitted to the clerk of the above-named court. A. D. Watts, commissioner. To the clerk of the Supreme Court of the United States, Washington, D. C. Office Supreme Court of U. S. Received Dec. 16, 1902. Opened in open court by order of court of Dec. 15, 1902, and filed this 16" of Dec. 1902. Jas. H. McKenney, clerk Sup. Ct. U. S.

(Endorsed:) Supreme Court U. S. October term, 1902. Term No. 9, orig'l. The State of South Dakota, compl't, *vs.* The State of North Carolina *et al.* Depositions of Chas. H. Burke and Marion Butler witnesses for the defendants. Filed Dec. 16, 1902.

333 Supreme Court of the United States, October Term, 1902.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA ET AL. } No. 9, Original.

On consideration of the motion to fix a day for the hearing of this cause,

It is now here ordered by the court that this cause be, and the same is hereby, assigned for argument on Monday, April 13th next.

Per MR. CHIEF JUSTICE FULLER.

December 22, 1902.

Endorsed: Supreme Court U. S. No. 9, original. October term 1902. State of South Dakota, v. State of North Carolina *et al.* Order. Filed Dec. 22 1902.

334 Supreme Court of the United States, October Term, 1902.

THE STATE OF SOUTH DAKOTA, Complainant,
vs.
THE STATE OF NORTH CAROLINA ET AL. } No. 9, Original.

Motion for Leave to File Stipulation Concerning Printing of the Record and for Order Directing Clerk to Print in Accordance Therewith.

Now comes The State of South Dakota, complainant, by Wheeler H. Peckham, its solicitor of record, and moves this honorable court for leave to file in this case the stipulation of counsel hereto annexed, and also for the entry of an order directing the clerk of this court to prepare the printed transcript of the record for distribution to the court on the trial of the cause in accordance with the terms of said stipulation.

WHEELER H. PECKHAM,
Per F. D. McK., *Solicitor of Record.*

335 In the Supreme Court of the United States, October Term, 1901. In Equity.

THE STATE OF SOUTH DAKOTA, Complainant,
v.
THE STATE OF NORTH CAROLINA ET AL. } No. 9, Original.

Stipulation as to Printing Record.

It is agreed by all the parties to this suit who have made appearance before this court, to wit, The State of South Dakota, the complainant, The State of North Carolina, the defendant, and Charles Salter, a defendant, that the printed record shall be constituted as follows:

1. The motion for process and bill of complaint.

2. The order of the court directing process to issue against the defendants for their appearance.
3. The answer of the defendant, The State of North Carolina.
4. The answer of the defendant, Charles Salter.
5. The replication of the complainant.
6. The order of the court for the taking of testimony.
7. All stipulations of counsel in their chronological order.
8. The depositions taken before Goodner, commissioner, in South Dakota, except that only one of the bonds and the coupons, together with the endorsement thereon, shall be printed, it being similar in all respects, except as to the serial number, with the others held by the complainant State.

336 9. The depositions taken before Lucas, commissioner, in New York city.

10. The depositions taken before Battle, commissioner, in Raleigh, North Carolina, including all the acts of the General Assembly of North Carolina referred to in the pleadings and in the testimony of the witnesses in this suit or introduced before the said Battle, commissioner.
11. The depositions taken before Watts, commissioner, in Washington, D. C.
12. The order of the court setting the case down for hearing on the 13th of April, 1903.

It is agreed that the clerk shall print only so much of the record as is above mentioned.

This is the 12th day of January, 1903.

WHEELER H. PECKHAM,
Of Counsel for Complainant.
J. C. L. HARRIS,
Of Counsel for the State of South Dakota.
ROBERT D. GILMER,
Attorney General of the State of North Carolina.
D. L. RUSSELL,
Counsel for Defendant Charles Salter.

(Endorsed:) Supreme Court of the United States, October term, 1902. No. 9, original. The State of South Dakota, complainant, *vs.* The State of North Carolina *et al.* Motion for leave to file stipulation and for order concerning printing of the transcript of the record and stipulation as to same. Filed January 19, 1903.